

## §214.2

## 8 CFR Ch. I (1–1–01 Edition)

new sentence immediately after the first sentence, effective Nov. 13, 2000. At 65 FR 67617, Nov. 13, 2000, the effective date of the amendment was delayed until Oct. 1, 2001. For the convenience of the user, the added text is set forth as follows:

### §214.1 Requirements for admission, extension, and maintenance of status.

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(c) \* \* \*

(1) \* \* \* An employer seeking extension of services for an H-2A must petition on Form ETA-9079 and ETA-9079W and file with the Department of Labor. \* \* \*

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### §214.2 Special requirements for admission, extension, and maintenance of status.

The general requirements in §214.1 are modified for the following non-immigrant classes:

(a) *Foreign government officials*—(1) *General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a non-immigrant under section 101(a)(15)(A) of the Act. An alien who has a non-immigrant status under section 101(a)(15)(A)(i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section 101(a)(15)(A)(iii) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he/she intends to continue to employ the applicant and describing the type of work the applicant will perform.

(2) *Definition of A-1 or A-2 dependent.* For purposes of employment in the United States, the term *dependent* of an A-1 or A-2 principal alien, as used in §214.2(a), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer

or employee assigned to a diplomatic or consular office in the United States:

(i) Spouse;  
(ii) Unmarried children under the age of 21;

(iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for A-1 or A-2 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him/her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity

from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *Dependent employment pursuant to formal bilateral employment agreements and informal de facto reciprocal arrangements.* (i) The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of an A-1 or A-2 principal alien assigned to official duty in the United States may accept or continue in unrestricted employment based on such formal bilateral agreements upon favorable recommendation by the Department of State and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (a)(6) of this section.

(ii) For purposes of this section, an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of an A-1 or A-2 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment based upon informal de facto arrangements upon favorable recommendation by the Department of State and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the procedures set forth in paragraph (a)(6) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent desiring employment are maintaining A-1 or A-2 status as appropriate;

(B) The principal's assignment in the United States is expected to last more than six months;

(C) Employment of a similar nature for dependents of United States Gov-

ernment officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign state's government;

(D) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of A-1 or A-2 dependents: who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; and/or who cannot establish that they have paid taxes and social security on income from current or previous United States employment.

(6) *Application procedures.* The following procedures are applicable to dependent employment applications under bilateral agreements and de facto arrangements:

(i) The dependent must submit a completed Form I-566 to the Department of State through the office, mission, or organization which employs his/her principal alien. A dependent applying under paragraph (a)(2)(iii) or (iv) of this section must submit a certified statement from the post-secondary educational institution confirming that he/she is pursuing studies on a full-time basis. A dependent applying under paragraph (a)(2)(v) of this section must submit medical certification regarding his/her condition. The certification should identify the dependent and the certifying physician and give the physician's phone number; identify the condition, describe the symptoms and provide a prognosis; and certify

that the dependent is unable to maintain a home of his or her own. Additionally, a dependent applying under the terms of a de facto arrangement must attach a statement from the prospective employer which includes the dependent's name; a description of the position offered and the duties to be performed; the salary offered; and verification that the dependent possesses the qualifications for the position.

(ii) The Department of State reviews and verifies the information provided, makes its determination, and endorses the Form I-566.

(iii) If the Department of State's endorsement is favorable, the dependent may apply to the Service. A dependent whose principal alien is stationed at a post in Washington, DC, or New York City shall apply to the District Director, Washington, DC, or New York City, respectively. A dependent whose principal alien is stationed elsewhere shall apply to the District Director, Washington, DC, unless the Service, through the Department of State, directs the dependent to apply to the district director having jurisdiction over his or her place of residence. Directors of the regional service centers may have concurrent adjudicative authority for applications filed within their respective regions. When applying to the Service, the dependent must present his or her Form I-566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Attorney General.

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than three years each.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified A-3.* A dependent or family member of a principal alien classified A-3 may not be employed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section

101(a)(15)(A) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(1)(C)(i) of the Act. An alien who is classified under section 101(a)(15)(A) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(1)(C)(i) of the Act.

(b) *Visitors*—(1) *General.* any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at §212.1(e) of this chapter may be admitted to and stay on Guam for period not to exceed fifteen days and are not eligible for extensions of stay.

(2) *Minimum six month admissions.* Any B-2 visitor who is found otherwise admissible and is issued a Form I-94, will be admitted for a minimum period of six months, regardless of whether less time is requested, provided, that any required passport is valid as specified in section 212(a)(26) of the Act. Exceptions to the minimum six month admission may be made only in individual cases upon the specific approval of the district director for good cause.

(3) *Visa Waiver Pilot Program.* Special requirements for admission and maintenance of status for visitors admitted to the United States under the Visa Waiver Pilot Program are set forth in section 217 of the Act and part 217 of this chapter.

(4) *Admission of aliens pursuant to the North American Free Trade Agreement (NAFTA).* A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section

101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid entry documents such as a passport and visa or Mexican Border Crossing Card (Form I-186 or I-586) in the case of Mexican applicants, a description of the purpose of entry, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the CFTA and, with respect to Mexico, are those requirements which are in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

(i) *Occupations and professions set forth in Appendix 1603.A.1 to Annex 1603 of the NAFTA—(A) Research and design.* Technical scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) *Growth, manufacture and production* (1) Harvester owner supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: Grain, fiber, fruit and vegetables.)

(2) Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

(C) *Marketing.* (1) Market researchers and analyst conducting independent research or analysis, or research or analysis for an enterprise located in the territory of another Party.

(2) Trade fair and promotional personnel attending a trade convention.

(D) *Sales.* (1) Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

(2) Buyers purchasing for an enterprise located in the territory of another Party.

(E) *Distribution.* (1) Transportation operators transporting goods or passengers to the United States from the territory of another Party or loading and transporting goods or passengers from the United States to the territory of another Party, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with the United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) *General service.* (1) Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1 to Annex 1603 of the NAFTA, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) and otherwise satisfying the requirements of Section A to Annex 1063 of the NAFTA.

(2) Management and supervisory personnel engaging in commercial transactions for an enterprise located in the territory of another Party.

(3) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

(4) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(5) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance.)

(6) Tour bus operators entering the United States:

(i) With a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party.

(ii) To meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party.

(iii) With a group of passengers on a bus tour to be unloaded in the United States and returning with no passengers or reloading with the group for transportation to the territory of another Party.

(7) Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(ii) Occupations and professions not listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA. Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

(5) *Construction workers not admissible.* Aliens seeking to enter the country to perform building or construction work, whether on-site or in-plant, are not eli-

gible for classification or admission as B-1 nonimmigrants under section 101(a)(15)(B) of the Act. However, alien nonimmigrants otherwise qualified as B-1 nonimmigrants may be issued visas and may enter for the purpose of supervision or training of others engaged in building or construction work, but not for the purpose of actually performing any such building or construction work themselves.

(c) *Transits—(1) Without visas.* An applicant for admission under the transit without visa privilege must establish that he is admissible under the immigration laws; that he has confirmed and onward reservations to at least the next country beyond the United States, and that he will continue his journey on the same line or a connecting line within 8 hours after his arrival; however, if there is no scheduled transportation within that 8-hour period, continuation of the journey thereafter on the first available transport will be satisfactory. Transfers from the equipment on which an applicant arrives to other equipment of the same or a connecting line shall be limited to 2 in number, with the last transport departing foreign (but not necessarily non-stop foreign), and the total period of waiting time for connecting transportation shall not exceed 8 hours except as provided above. Notwithstanding the foregoing, an applicant, if seeking to join a vessel in the United States as a crewman, shall be in possession of a valid “D” visa and a letter from the owner or agent of the vessel he seeks to join, shall proceed directly to the vessel on the first available transportation and upon joining the vessel shall remain aboard at all times until it departs from the United States. Except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without a visa must be made at one of the following ports of entry: Agana, Guam, Anchorage, AK, Atlanta, GA, Baltimore, MD, Bangor, ME, Boston, MA, Brownsville, TX, Buffalo, NY, Charlotte, NC, Charlotte Amalie, VI, Chicago, IL, Christiansted, VI, Cleveland, OH, Dallas, TX, Daytona, FL, Denver, CO, Detroit, MI, Fairbanks, AK, Ft. Myers, FL, Hartford, CT, Honolulu, HI, Houston, TX,

Los Angeles, CA, Memphis, TN, Miami, FL, Newark, NJ, New Orleans, LA, New York, NY, Niagara Falls, NY, Norfolk, VA, Oakland, CA, Orlando, FL, Philadelphia, PA, Pittsburgh, PA, Ponce, PR, Port Everglades FL, Portland, OR, San Antonio, TX, San Diego, CA, Sanford, FL, San Francisco, CA, San Jose, CA, San Juan, PR, Seattle, WA, St. Paul, MN, Tampa, FL, Washington, DC. The privilege of transit without a visa may be authorized only under the conditions that the transportation line, without the prior consent of the Service, will not refund the ticket which was presented to the Service as evidence of the alien's confirmed and onward reservations; that the alien will not apply for extension of temporary stay or for adjustment of status under section 245 of the Act, and that until his departure from the United States responsibility for his continuous actual custody will lie with the transportation line which brought him to the United States unless at the direction of the district director he is in the custody of this Service or other custody approved by the Commissioner.

(2) *United Nations Headquarters District.* An alien of the class defined in section 101(a)(15)(C) of the Act, whose visa is limited to transit to and from the United Nations Headquarters District, if otherwise admissible, shall be admitted on the additional conditions that he proceed directly to the immediate vicinity of the United Nations Headquarters District, and remain there continuously, departing therefrom only if required in connection with his departure from the United States, and that he have a document establishing his ability to enter some country other than the United States following his sojourn in the United Nations Headquarters District. The immediate vicinity of the United Nations Headquarters District is that area lying within a twenty-five mile radius of Columbus Circle, New York, NY.

(3) *Others.* The period of admission of an alien admitted under section 101(a)(15)(C) of the Act shall not exceed 29 days.

(d) *Crewmen.* (1) The provisions of parts 251, 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class de-

fined in section 101(a)(15)(D) of the Act. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft. However, nonimmigrant crewmen may perform crewmember duties through stopovers on an international flight for any United States carrier where such flight uses a single aircraft and has an origination or destination point outside the United States.

(2) *Denial of crewman status in the case of certain labor disputes (D non-immigrants).* (i) An alien shall be denied D crewman status as described in section 101(a)(15)(D) of the Act if:

(A) The alien intends to land for the purpose of performing service on a vessel of the United States (as defined in 46 U.S.C. 2101(46)) or an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958); and

(B) A labor dispute consisting of a strike or lockout exists in the bargaining unit of the employer in which the alien intends to perform such service; and

(C) The alien is not already an employee of the company (as described in paragraph (d)(2)(iv) of this section).

(ii) *Refusal to land.* Any alien (except a qualified current employee as described in paragraph (d)(2)(iv) of this section) who the examining immigration officer determines has arrived in the United States for the purpose of performing service on board a vessel or an aircraft of the United States when a strike or lockout is under way in the bargaining unit of the employer, shall be refused a conditional landing permit under section 252 of the Act.

(iii) *Ineligibility for parole.* An alien described in paragraph (d)(2)(i) of this section may not be paroled into the United States under section 212(d)(5) of the Act for the purpose of performing crewmember duties unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States. This paragraph does not prohibit the granting of parole for other purposes, such as medical emergencies.

(iv) *Qualified current employees.* (A) Paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section do not apply to an alien who is already an employee of the owner or operator of the vessel or air carrier and who at the time of inspection presents true copies of employer work records which satisfy the examining immigration officer that the alien:

(1) Has been an employee of such employer for a period of not less than one year preceding the date that a strike or lawful lockout commenced;

(2) Has served as a qualified crewman for such employer at least once in three different months during the 12-month period preceding the date that the strike or lockout commenced; and

(3) Shall continue to provide the same crewman services that he or she previously provided to the employer.

(B) An alien crewman who qualifies as a current employee under this paragraph remains subject to the restrictions on his or her employment in the United States contained in paragraph (d)(1) of this section.

(v) *Strike or lockout determination.* These provisions will take effect if the Attorney General, through the Commissioner of the Immigration and Naturalization Service or his or her designee, after consultation with the National Mediation Board, determines that a strike, lockout, or labor dispute involving a work stoppage is in progress in the bargaining unit of the employer for whom the alien intends to perform such service.

(e) *Treaty traders and investors—(1) Treaty trader.* An alien, if otherwise admissible, may be classified as a nonimmigrant treaty trader (E-1) under the provisions of section 101(a)(15)(E)(i) of the Act if the alien:

(i) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an employee of a foreign person or organization engaged in trade principally between the United States and the treaty country of which the alien is a national, taking into consideration any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(ii) Intends to depart the United States upon the expiration or termination of treaty trader (E-1) status.

(2) *Treaty investor.* An alien, if otherwise admissible, may be classified as a nonimmigrant treaty investor (E-2) under the provision of section 101(a)(15)(E)(ii) of the Act if the alien:

(i) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living;

(ii) Is seeking entry solely to develop and direct the enterprise; and

(iii) Intends to depart the United States upon the expiration or termination of treaty investor (E-2) status.

(3) *Employee of treaty trader or treaty investor.* An alien employee of a treaty trader, if otherwise admissible, may be classified as E-1, and an alien employee of a treaty investor, if otherwise admissible, may be classified as E-2 if the employee is in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the alien's services essential to the efficient operation of the enterprise. The employee must have the same nationality as the principal alien employer. In addition, the employee must intend to depart the United States upon the expiration or termination of E-1 or E-2 status. The principal alien employer must be:

(i) A person in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status or, if not in the United States, would be classifiable as a treaty trader or treaty investor; or

(ii) An enterprise or organization at least 50 percent owned by persons in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status or who, if not in the United States, would be classifiable as treaty traders or treaty investors.

(4) *Spouse and children of treaty trader or treaty investor.* The spouse and child of a treaty trader or treaty investor accompanying or following to join the

principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of a treaty trader or treaty investor is not material to the classification of the spouse or child under the provisions of section 101(a)(15)(E) of the Act.

(5) *Nonimmigrant intent.* An alien classified under section 101(a)(15)(E) of the Act shall maintain an intention to depart the United States upon the expiration or termination of E-1 or E-2 status. However, an application for initial admission, change of status, or extension of stay in E classification may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

(6) *Treaty country.* A treaty country is, for purposes of this section, a foreign state with which a qualifying Treaty of Friendship, Commerce, or Navigation or its equivalent exists with the United States. A treaty country includes a foreign state that is accorded treaty visa privileges under section 101(a)(15)(E) of the Act by specific legislation.

(7) *Treaty country nationality.* The nationality of an individual treaty trader or treaty investor is determined by the authorities of the foreign state of which the alien is a national. In the case of an enterprise or organization, ownership must be traced as best as is practicable to the individuals who are ultimately its owners.

(8) *Terms and conditions of E treaty status—(i) Limitations on employment.* The Service determines the terms and conditions of E treaty status at the time of admission or approval of a request to change nonimmigrant status to E classification. A treaty trader, treaty investor, or treaty employee may engage only in employment which is consistent with the terms and conditions of his or her status and the activity forming the basis for the E treaty status.

(ii) *Subsidiary employment.* Treaty employees may perform work for the parent treaty organization or enterprise, or any subsidiary of the parent organization or enterprise. Performing work for subsidiaries of a common parent enterprise or organization will not be

deemed to constitute a substantive change in the terms and conditions of the underlying E treaty employment if, at the time the E treaty status was determined, the applicant presented evidence establishing:

(A) The enterprise or organization, and any subsidiaries thereof, where the work will be performed; the requisite parent-subsidiary relationship; and that the subsidiary independently qualifies as a treaty organization or enterprise under this paragraph;

(B) In the case of an employee of a treaty trader or treaty investor, the work to be performed requires executive, supervisory, or essential skills; and

(C) The work is consistent with the terms and conditions of the activity forming the basis of the classification.

(iii) *Substantive changes.* Prior Service approval must be obtained where there will be a substantive change in the terms or conditions of E status. In such cases, a treaty alien must file a new application on Form I-129 and E supplement, in accordance with the instructions on that form, requesting extension of stay in the United States. In support of an alien's Form I-129 application, the treaty alien must submit evidence of continued eligibility for E classification in the new capacity. Alternatively, the alien must obtain from a consular officer a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. The Service will deem there to have been a substantive change necessitating the filing of a new Form I-129 application in cases where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) *Non-substantive changes.* Prior approval is not required, and there is no need to file a new Form I-129, if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment which would affect the alien's eligibility for E classification. Further, prior approval is not required if corporate changes occur which do not affect the previously approved employment relationship, or



are otherwise non-substantive. To facilitate admission, the alien may:

(A) Present a letter from the treaty-qualifying company through which the alien attained E classification explaining the nature of the change;

(B) Request a new Form I-797, Approval Notice, reflecting the non-substantive change by filing with the appropriate Service Center Form I-129, with fee, and a complete description of the change, or;

(C) Apply directly to State for a new E visa reflecting the change. An alien who does not elect one of the three options contained in paragraph (e)(8)(iv) (A) through (C) of this section, is not precluded from demonstrating to the satisfaction of the immigration officer at the port-of-entry in some other manner, his or her admissibility under section 101(a)(15)(E) of the Act.

(v) *Advice.* To ascertain whether a change is substantive, an alien may file with the Service Center Form I-129, with fee, and a complete description of the change, to request appropriate advice. In cases involving multiple employees, an alien may request that a Service Center determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single Form I-129, with fee, and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes. Where employees are located within multiple jurisdictions, such a request for advice must be filed with the Service Center in Lincoln, Nebraska.

(vi) *Approval.* If an application to change the terms and conditions of E status or employment is approved, the Service shall notify the applicant on Form I-797. An extension of stay in nonimmigrant E classification may be granted for the validity of the approved application. The alien is not authorized to begin the new employment until the application is approved. Employment is authorized only for the period of time the alien remains in the United States. If the alien subsequently departs from the United States, readmission in E classification may be authorized where the alien presents his or her unexpired E visa together with the Form I-797, Approval Notice, indi-

cating Service approval of a change of employer or of a change in the substantive terms or conditions of treaty status or employment in E classification, or, in accordance with 22 CFR 41.112(d), where the alien is applying for readmission after an absence not exceeding 30 days solely in contiguous territory.

(vii) An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. In all cases where the treaty employee will be providing services to a subsidiary under this paragraph, the subsidiary is required to comply with the terms of 8 CFR part 274a.

(9) *Trade—definitions.* For purposes of this paragraph: *Items of trade* include but are not limited to goods, services, international banking, insurance, monies, transportation, communications, data processing, advertising, accounting, design and engineering, management consulting, tourism, technology and its transfer, and some news-gathering activities. For purposes of this paragraph, goods are tangible commodities or merchandise having extrinsic value. Further, as used in this paragraph, services are legitimate economic activities which provide other than tangible goods.

*Trade* is the existing international exchange of items of trade for consideration between the United States and the treaty country. Existing trade includes successfully negotiated contracts binding upon the parties which call for the immediate exchange of items of trade. Domestic trade or the development of domestic markets without international exchange does not constitute trade for purposes of section 101(a)(15)(E) of the Act. This exchange must be traceable and identifiable. Title to the trade item must pass from one treaty party to the other.

(10) *Substantial trade.* Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. This continuous flow contemplates numerous transactions over time. Treaty trader status may not be established or maintained on the basis of a single

transaction, regardless of how protracted or monetarily valuable the transaction. Although the monetary value of the trade item being exchanged is a relevant consideration, greater weight will be given to more numerous exchanges of larger value. There is no minimum requirement with respect to the monetary value or volume of each individual transaction. In the case of smaller businesses, an income derived from the value of numerous transactions which is sufficient to support the treaty trader and his or her family constitutes a favorable factor in assessing the existence of substantial trade.

(11) *Principal trade.* Principal trade between the United States and the treaty country exists when over 50 percent of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality.

(12) *Investment.* An investment is the treaty investor's placing of capital, including funds and other assets (which have not been obtained, directly or indirectly, through criminal activity), at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. The alien has the burden of establishing such irrevocable commitment. The alien may use any legal mechanism available, such as the placement of invested funds in escrow pending admission in, or approval of, E classification, that would not only irrevocably commit funds to the enterprise, but might also extend personal liability protection to the treaty investor in the event the application for E classification is denied.

(13) *Bona fide enterprise.* The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking which produces services or

goods for profit. The enterprise must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

(14) *Substantial amount of capital.* A substantial amount of capital constitutes an amount which is:

(i) Substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;

(ii) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and

(iii) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Generally, the lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered a substantial amount of capital.

(15) *Marginal enterprise.* For purposes of this section, an enterprise may not be marginal. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income, but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future income-generating capacity should generally be realizable within 5 years from the date the alien commences the normal business activity of the enterprise.

(16) *Solely to develop and direct.* An alien seeking classification as a treaty investor (or, in the case of an employee of a treaty investor, the owner of the treaty enterprise) must demonstrate that he or she does or will develop and direct the investment enterprise. Such an applicant must establish that he or she controls the enterprise by demonstrating ownership of at least 50 percent of the enterprise, by possessing operational control through a managerial position or other corporate device, or by other means.

(17) *Executive and supervisory character.* The applicant's position must be principally and primarily, as opposed

to incidentally or collaterally, executive or supervisory in nature. Executive and supervisory duties are those which provide the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof. In determining whether the applicant has established possession of the requisite control and responsibility, a Service officer shall consider, where applicable:

(i) That an executive position is one which provides the employee with great authority to determine the policy of, and the direction for, the enterprise;

(ii) That a position primarily of supervisory character provides the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees, and;

(iii) Whether the applicant possesses executive and supervisory skills and experience; a salary and position title commensurate with executive or supervisory employment; recognition or indicia of the position as one of authority and responsibility in the overall organizational structure; responsibility for making discretionary decisions, setting policies, directing and managing business operations, supervising other professional and supervisory personnel; and that, if the position requires some routine work usually performed by a staff employee, such functions may only be of an incidental nature.

(18) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the treaty enterprise. In determining whether the skills possessed by the alien are essential to the operation of the employing treaty enterprise, a Service officer must consider, where applicable:

(i) The degree of proven expertise of the alien in the area of operations involved; whether others possess the applicant's specific skill or aptitude; the length of the applicant's experience and/or training with the treaty enterprise; the period of training or other experience necessary to perform effec-

tively the projected duties; the relationship of the skill or knowledge to the enterprise's specific processes or applications, and the salary the special qualifications can command; that knowledge of a foreign language and culture does not, by itself, meet the special qualifications requirement, and;

(ii) Whether the skills and qualifications are readily available in the United States. In all cases, in determining whether the applicant possesses special qualifications which are essential to the treaty enterprise, a Service officer must take into account all the particular facts presented. A skill that is essential at one point in time may become commonplace at a later date. Skills that are needed to start up an enterprise may no longer be essential after initial operations are complete and running smoothly. Some skills are essential only in the short-term for the training of locally hired employees. Under certain circumstances, an applicant may be able to establish his or her essentiality to the treaty enterprise for a longer period of time, such as, in connection with activities in the areas of product improvement, quality control, or the provision of a service not yet generally available in the United States. Where the treaty enterprise's need for the applicant's special qualifications, and therefore, the applicant's essentiality, is time-limited, Service officers may request that the applicant provide evidence of the period for which skills will be needed and a reasonable projected date for completion of start-up or replacement of the essential skilled workers.

(19) *Period of admission.* Periods of admission are as follows:

(i) A treaty trader or treaty investor may be admitted for an initial period of not more than 2 years.

(ii) The spouse and minor children accompanying or following to join a treaty trader or treaty investor shall be admitted for the period during which the principal alien is in valid treaty trader or investor status. The temporary departure from the United States of the principal trader or investor shall not affect the derivative status of the dependent spouse and minor

unmarried children, provided the familial relationship continues to exist and the principal remains eligible for admission as an E nonimmigrant to perform the activity.

(iii) Unless otherwise provided for in this chapter, an alien shall not be admitted in E classification for a period of time extending more than 6 months beyond the expiration date of the alien's passport.

(20) *Extensions of stay.* Requests for extensions of stay may be granted in increments of not more than 2 years. A treaty trader or treaty investor in valid E status may apply for an extension of stay by filing an application for extension of stay on Form I-129 and E Supplement, with required accompanying documents, in accordance with §214.1 and the instructions on that form.

(i) For purposes of eligibility for an extension of stay, the alien must prove that he or she:

(A) Has at all times maintained the terms and conditions of his or her E nonimmigrant classification;

(B) Was physically present in the United States at the time of filing the application for extension of stay; and

(C) Has not abandoned his or her extension request.

(ii) With limited exceptions, it is presumed that employees of treaty enterprises with special qualifications who are responsible for start-up operations should be able to complete their objectives within 2 years. Absent special circumstances, therefore, such employees will not be eligible to obtain an extension of stay.

(iii) Subject to paragraph (e)(5) of this section and the presumption noted in paragraph (e)(22)(ii) of this section, there is no specified number of extensions of stay that a treaty trader or treaty investor may be granted.

(21) *Change of nonimmigrant status.* (i) An alien in another valid nonimmigrant status may apply for change of status to E classification by filing an application for change of status on Form I-129 and E Supplement, with required accompanying documents establishing eligibility for a change of status and E classification, in accordance with 8 CFR part 248 and

the instructions on Form I-129 and E Supplement.

(ii) The spouse or minor children of an applicant seeking a change of status to that of treaty trader or treaty investor alien shall file concurrent applications for change of status to derivative treaty classification on the appropriate Service form. Applications for derivative treaty status shall:

(A) Be approved only if the principal treaty alien is granted treaty alien status and continues to maintain that status;

(B) Be approved for the period of admission authorized in paragraph (e)(20) of this section.

(22) *Denial of treaty trader or treaty investor status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) A citizen of Canada or Mexico may be denied E treaty trader or treaty investor status as described in section 101(a)(15)(E) of the Act and section B of Annex 1603 of the NAFTA if:

(A) The Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers in the alien's occupational classification is in progress at the place where the alien is or intends to be employed; and

(B) Temporary entry of that alien may affect adversely either:

(1) The settlement of any labor dispute that is in progress at the place or intended place of employment, or

(2) The employment of any person who is involved in such dispute.

(ii) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, or whether the Service has been otherwise informed that such a strike or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other E nonimmigrants; and

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers.

(iii) Although participation by an E nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(iv) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (e)(22)(i) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny entry to an applicant for E status.

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission*. A nonimmigrant student and his or her accompanying spouse and minor children may be admitted into the United States in F-1 and F-2 classifications for duration of status under section 101(a)(15)(F)(i) of the Act, if the student:

(A) Presents a properly completed Form I-20 A-B/I-20 ID, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which is issued by a school approved by the Service for attendance by foreign students;

(B) Has documentary evidence of financial support in the amount indicated on the Form I-20 A-B/I-20 ID; and

(C) For students seeking initial admission only, intends to attend the school specified in the student's visa except where the student is exempt from the requirement for a visa, in which case the student must intend to

attend the school indicated on the Form I-20 A-B/I-20 ID.

(ii) *Disposition of Form I-20 A-B/I-20 ID*. Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (Student) Copy shall be referred to as the I-20 ID. When an F-1 student applies for admission with a complete Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number from Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the Form I-20 A-B;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

(2) *I-20 ID*. An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO) as defined in 8 CFR 214.3(l)(1)(i).

(3) *Spouse and minor children following to join student*. The spouse and minor children following to join an F-1 student are eligible for admission to the United States if the F-1 student is, or will be within sixty days, enrolled in a full course of study or, if the student is engaged in approved practical training following completion of studies. The eligible spouse and minor children of an F-1 student may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO. A new Form I-20 A-B is required where there has been any substantive change in the information on the student's current I-20 ID.

(4) *Temporary absence*. An F-1 student returning to the United States from a temporary absence of five months or

less may be readmitted for attendance at a Service-approved educational institution, if the student presents:

(i) A current I-20 ID properly endorsed by the DSO for reentry if there is no substantive change on the most recent I-20 ID; or

(ii) A new Form I-20 A-B if there has been any substantive change in the information on the student's most recent I-20 ID, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service-approved institution, or who has advanced to a higher level of study.

(5) *Duration of status*—(i) *General*. Duration of status is defined as the time during which an F-1 student is pursuing a full course of studies at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies. Duration of status also includes the period designated by the Commissioner as provided in paragraph (f)(5)(vi) of this section.

(ii) *Change in educational levels*. An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational level is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

(iii) *Annual vacation*. An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

(iv) *Illness or medical conditions*. A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is con-

sidered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.

(v) *Emergent circumstances as determined by the Commissioner*. Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the FEDERAL REGISTER, an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the FEDERAL REGISTER will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.

(vi) *Extension of duration of status*. The Commissioner may, by notice in the FEDERAL REGISTER, at any time she determines that the H-1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H-1B application, the duration of status of any F-1 student on behalf of whom an employer has timely filed an application for change of status to H-1B. The alien, according to 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay in order to obtain this extension of stay. An F-1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her F nonimmigrant

stay. An extension made under this paragraph applies to the F-2 dependent aliens.

(6) *Full course of study*—(i) *General*. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A “full course of study” as required by section 101(a)(15)(F)(i) of the Act means:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the

course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the FEDERAL REGISTER shall be deemed to be engaged in a “full course of study” if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.

(ii) *Institution of higher learning*. For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor’s, master’s, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. Vocational or business schools which are classifiable as M-1 schools are provided for by regulations under 8 CFR 214.2(m).

(iii) *Reduced course load*. The designated school official may advise an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(7) *Extension of stay*—(i) *General*. An F-1 student is admitted for duration of status. The student is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F-1 student who is unable to complete a full course of study in a timely manner must apply, in a 30-day period before the completion date on the Form I-20 A-B, to the DSO for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Completion date on Form I-20 A-B*. When determining the program completion date on Form I-20 A-B, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. A grace period of no more than one year may be added onto the DSO's estimate.

(iii) *Program extension for students in lawful status*. An F-1 student who is unable to meet the program completion date on the Form I-20 A-B may be granted a program extension by the school, if the DSO certifies on a Form I-538 that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extension. The DSO must notify the Service within 30 days of any approved program extensions by forwarding to the Service data processing center a certification on Form I-538 and the top page of a new Form I-20 A-B showing a new program completion date.

(iv) *Failure to complete the educational program in a timely manner*. An F-1 student who is unable to complete the educational program within the time period written on the Form I-20 A-B and who is ineligible for program extension pursuant to paragraph (f)(7)(iii) of this section is considered to be out of status. Under these circumstances, the student must apply for reinstatement under the Provisions of paragraph (f)(16) of this section.

(8) *School transfer*—(i) *Eligibility*. An F-1 student who is maintaining status may transfer to another Service-approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(ii) *Transfer procedure*. To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 A-B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.

(iii) *Notification*. Upon receipt of the student's Form I-20 A-B, the DSO must:

(A) Note "transfer completed on (date)" on the student's I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance;

(B) Return the I-20 ID to the student;

(C) Submit the I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

(D) Forward a photocopy of the Form I-20 A-B School Copy to the school from which the student transferred.

(9) *Employment*—(i) *On-campus employment*. On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the



case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the FEDERAL REGISTER, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the FEDERAL REGISTER document. An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents.

(ii) *Off-campus work authorization—*

(A) *General.* An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. The em-

ployment authorization is automatically terminated whenever the student fails to maintain status. In emergent circumstances as determined by the Commissioner, the Commissioner may suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the FEDERAL REGISTER.

(B) *Wage-and-labor attestation requirement.* Except as provided under paragraphs (f)(9)(ii)(C) and (f)(9)(iii) of this section, a student may be authorized to accept off-campus employment only if the prospective employer has filed a labor-and-wage attestation pursuant to 20 CFR part 655, subparts J and K (requiring the employer to attest to the fact that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.)

(C) *Severe economic hardship.* If other employment opportunities are not available or are otherwise insufficient, an eligible F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses.

(D) *Procedure for off-campus employment authorization.* The student must submit the application to the DSO on Form I-538, Certification by Designated School Official. The DSO may recommend the student work off-campus for one year intervals by certifying on the Form I-538 that:

(1) The student has been in F-1 status for one full academic year;

(2) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(3) The student has demonstrated that acceptance of employment will

not interfere with the student's carrying a full course of study; and

(4) Either: (i) The prospective employer has submitted a labor-and-wage attestation pursuant to paragraph (f)(9)(ii)(B) of this section, or

(ii) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section, and has demonstrated that employment under paragraph (f)(9)(i) and (f)(9)(ii)(B) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) *Wage-and-Labor attestation application to the DSO.* An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538 after the employer has filed the labor-and-wage attestation. By certifying on Form I-538 that the student is eligible for off-campus employment, and endorsing the student's I-20 ID, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The endorsement on the student's I-20 ID should read "part-time employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status pursuant to 8 CFR 274a.12(b)(6)(ii) and employer-specific and, therefore, exempt from the EAD requirement. The DSO must notify the Service of each off-campus employment authorization by forwarding to the Service data processing center the completed Form I-538. The DSO shall return to the student the endorsed I-20 ID.

(F) *Severe economic hardship application—(1)* The applicant should submit to the Service Form I-20 ID, Form I-538, and Form I-765 along with the fee required by 8 CFR 103.7(b)(1), and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under para-

graphs (f)(9)(i) and (f)(9)(ii)(B) of this section. The requirement with respect to paragraph (f)(9)(ii)(B) of this section is satisfied if the DSO certifies on Form I-538 that the student and the DSO are not aware of available employment in the area through the Pilot Off-Campus Employment Program. In areas where there are such Pilot program opportunities, this requirement is satisfied if the DSO certifies on Form I-538 that employment under the Pilot program is insufficient to meet the student's needs. The student must apply for the employment authorization on Form I-765 with the Service office having jurisdiction over his or her place of residence.

(2) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Off-campus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status.

(iii) *Internship with an international organization.* A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization, in person, to the Service office having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from

the international organization that the proposed employment is within the scope of the organization's sponsorship, an I-20 ID endorsed for reentry by the DSO within the last 30 days, and a completed Form I-765, Application for Employment Authorization, with the fee required in 8 CFR 103.7(b)(1).

(10) *Practical training.* Practical training is available to F-1 students who have been lawfully enrolled on a full-time basis in a Service-approved college, university, conservatory, or seminary for at least nine consecutive months. Students in English language training programs are ineligible for practical training. An eligible F-1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training programs.* An F-1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an established curriculum. Curricular practical training is defined to be alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. Exceptions to the nine-month in status requirement are provided for students enrolled in graduate studies which require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO on Form I-538. Upon approving the request for authorization, the DSO shall:

(A) Certify the Form I-538 and send the form to the Service's data processing center;

(B) Endorse the student's I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and

(C) Sign and date the I-20 ID before returning it to the student. A student may begin curricular practical training

only after receiving his or her I-20 ID with the DSO endorsement.

(ii) *Optional practical training—(A) General.* An F-1 student may apply to the Service for authorization for temporary employment for practical training directly related to the student's major area of study. Temporary employment for practical training may be authorized:

(1) During the student's annual vacation and at other times when school is not in session if the student is currently enrolled and eligible, and intends, to register for the next term or session;

(2) While school is in session, provided that practical training does not exceed twenty hours a week while school is in session;

(3) After completion of all course requirements for the degree (excluding thesis or equivalent), if the student is in a bachelor's master's, or doctoral degree program; or

(4) After completion of the course of study. A student must complete all practical training within a 14 month period following the completion of study.

(B) *Termination of practical training.* Authorization to engage in practical training employment is automatically terminated when the student transfers to another school.

(C) *Request for authorization for practical training.* A request for authorization to accept practical training must be made to the designated school official (DSO) of the school the student is authorized to attend on Form I-538, accompanied by his or her current Form I-20 ID.

(D) *Action of the DSO.* In making a recommendation for practical training, a designated school official must:

(1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(2) Endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)"; and

(3) Return to the student the Form I-20 ID and send to the Service data processing center the school certification on Form I-538.

(11) *Employment authorization.* The total periods of authorization for optional practical training under paragraph (f)(10) of this section shall not exceed a maximum of twelve months. Part-time practical training, 20 hours per week or less, shall be deducted from the available practical training at one-half the full-time rate. As required by the regulations at 8 CFR part 274a, an F-1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been issued an Employment Authorization Document (EAD) by the Service. An F-1 student must apply to the INS for the EAD by filing the Form I-765. The application for employment authorization must include the following documents:

(i) A completed Form I-765, with the fee required by § 103.7(b)(1); and

(ii) A DSO's recommendation for practical training on I-20 ID.

(12) *Decision on application for employment authorization.* The Service shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.

(13) *Temporary absence from the United States of F-1 student granted employment authorization.* (i) A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.

(14) *Effect of strike or other labor dispute.* Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee, that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means the facility or facilities where a labor dispute exists. The employer is prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.

(15) *Spouse and children of F-1 student.* The F-1 spouse and children of an F-1 student may not accept employment.

(16) *Reinstatement to student status—(i) General.* The Service may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, Application to Extend Time of Temporary Stay, accompanied by a properly completed Form I-20 A-B from the school the student is attending or intends to attend, if the student:

(A) Establishes to the satisfaction of the Service that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20 A-B;

(C) Has not engaged in unauthorized employment; and

(D) Is not deportable on any ground other than section 241(a)(1)(B) or (C)(i) of the Act.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the Form I-20 A-B to indicate that the student has been reinstated, return the I-20 ID to the student, and forward the school copy of the form to the Service's processing center for data entry. If the Service does not reinstate the student, the student may not appeal that decision.

(g) *Representatives to international organizations*—(1) *General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(G) of the Act. An alien who has a nonimmigrant status under section 101(a)(15)(G) (i), (ii), (iii) or (iv) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section 101(a)(15)(G)(v) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he or she intends to continue to employ the applicant and describing the type of work the applicant will perform.

(2) *Definition of G-1, G-3, or G-4 dependent.* For purposes of employment in the United States, the term *dependent* of a G-1, G-3, or G-4 principal alien, as used in §214.2(g), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer or employee assigned to a mission, to an international organization, or is employed by an international organization in the United States:

- (i) Spouse;
- (ii) Unmarried children under the age of 21;
- (iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;
- (iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of

State shall maintain a listing of foreign states which the United States has such bilateral employment agreements. The provisions of this paragraph apply only to G-1 and G-3 dependents under certain bilateral agreements and are not applicable to G-4 dependents; and

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain, or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for G-1 and G-3 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him or her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *G-1 and G-3 dependent employment pursuant to formal bilateral employment agreements and informal de facto reciprocal arrangements, and G-4 dependent employment.* (i) The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of a G-1 or G-3 principal alien assigned to official duty in the United

States may accept or continue in unrestricted employment based on such formal bilateral agreements, if the applicable agreement includes persons in G-1 or G-3 visa status, upon favorable recommendation by the Department of State and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (g)(6) of this section.

(ii) For purposes of this section, an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of a G-1 or G-3 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment based upon informal de facto arrangements, and dependents of a G-4 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment upon favorable recommendation by the Department of State and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the procedures set forth in paragraph (g)(6) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent desiring employment are maintaining G-1, G-3, or G-4 status as appropriate;

(B) The principal's assignment in the United States is expected to last more than six months;

(C) Employment of a similar nature for dependents of United States Government officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign government. The provisions of this paragraph apply only to G-1 and G-3 dependents;

(D) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for

which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of G-1, G-3, or G-4 dependents: who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; and/or who cannot establish that they have paid taxes and social security on income from current or previous United States employment. Additionally, the Department of State may determine a G-4 dependent's employment is contrary to the interest of the United States when the principal alien's country of nationality has one or more components of an international organization or international organizations within its borders and does not allow the employment of dependents of United States citizens employed by such component(s) or organization(s).

(6) *Application procedures.* The following procedures are applicable to G-1 and G-3 dependent employment applications under bilateral agreements and de facto arrangements, as well as to G-4 dependent employment applications:

(i) The dependent must submit a completed Form I-566 to the Department of State through the office, mission, or organization which employs his or her principal alien. If the principal is assigned to or employed by the United Nations, the Form I-566 must be submitted to the U.S. Mission to the United Nations. All other applications must be submitted to the Office of Protocol of the Department of State. A dependent applying under paragraph (g)(2) (iii) or (iv) of this section must submit a certified statement from the post-secondary educational institution confirming that he or she is pursuing

studies on a full-time basis. A dependent applying under paragraph (g)(2)(v) of this section must submit medical certification regarding his or her condition. The certification should identify the dependent and the certifying physician and give the physician's phone number; identify the condition, describe the symptoms and provide a prognosis; certify that the dependent is unable to establish, re-establish, and maintain a home or his or her own. Additionally, a G-1 or G-3 dependent applying under the terms of a de facto arrangement or a G-4 dependent must attach a statement from the prospective employer which includes the dependent's name; a description of the position offered and the duties to be performed; the salary offered; and verification that the dependent possesses the qualifications for the position.

(ii) The Department of State reviews and verifies the information provided, makes its determination, and endorses the Form I-566.

(iii) If the Department of State's endorsement is favorable, the dependent may apply to the Service. A dependent whose principal alien is stationed at a post in Washington, DC, or New York City shall apply to the District Director, Washington, DC, or New York City, respectively. A dependent whose principal alien is stationed elsewhere shall apply to the District Director, Washington, DC, unless the Service, through the Department of State, directs the dependent to apply to the district director having jurisdiction over his or her place of residence. Directors of the regional service centers may have concurrent adjudicative authority for applications filed within their respective regions. When applying to the Service, the dependent must present his or her Form I-566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Attorney General.

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than three years each.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified G-2 or G-5.* A dependent or family member of a principal alien classified G-2 or G-5 may not be employed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section 101(a)(15)(G) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(1)(C)(i) of the Act. An alien who is classified under section 101(a)(15)(G) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(1)(C)(i) of the Act.

(11) *Special provision.* As of February 16, 1990 no new employment authorization will be granted and no pre-existing employment authorization will be extended for a G-1 dependent absent an appropriate bilateral agreement or de facto arrangement. However, a G-1 dependent who has been granted employment authorization by the Department of State prior to the effective date of this section and who meets the definition of dependent under §214.2(g)(2) (i), (ii), (iii) or (v) of this part but is not covered by the terms of a bilateral agreement or de facto arrangement may be allowed to continue in employment until whichever of the following occurs first:

(i) The employment authorization by the Department of State expires; or

(ii) He or she no longer qualifies as a dependent as that term is defined in this section; or

(iii) March 19, 1990.

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) *General.* Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: under section

101(a)(15)(H)(i)(a) of the Act as a registered nurse; under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit and ability; under section 101(a)(15)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature; under section 101(a)(15)(H)(ii)(b) of the Act as an alien coming to perform other temporary services or labor; or under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee or as a participant in a special education exchange visitor program. These classifications are called H-1A, H-1B, H-2A, H-2B, and H-3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.* (A) An H-1A classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act. This classification expired on September 1, 1995, but certain aliens previously accorded H-1A classification are eligible to obtain and extension of stay until September 30, 1997, pursuant to Public Law 104-302.

(B) An H-1B classification applies to an alien who is coming temporarily to the United States:

(1) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act,

that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

(2) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(3) To perform services as a fashion model of distinguished merit and ability and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act.

(C) An H-2A classification applies to an alien who is coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.

(D) An H-2B classification applies to an alien who is coming temporarily to the United States to perform non-agricultural work of a temporary or seasonal nature, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined by the service. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam, or a notice from one of these individuals that such a certification cannot be made, prior to the filing of a petition with the Service.

(E) An H-3 classification applies to an alien who is coming temporarily to the United States:

(1) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution, or

(2) As a participant in a special education exchange visitor program which



provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) *Petitions*—(i) *Filing of petitions*—(A) *General.* A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this section. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, shall be filed with the local Service office or a designated Service office. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. However, the original document shall be submitted if requested by the Service.

(B) *Service or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

(C) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for, or receive training from, more than one employer, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition.

(D) *Change of employers.* If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I-129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved

petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the employment with the new petitioner until the petition is approved. An H-1A non-immigrant alien may not change employers.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H-1A, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions;

(1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a

complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location.

(iii) *Named beneficiaries.* Non-agricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H-2B classification, exceptions may be granted in emergent situations involving multiple beneficiaries at the discretion of the director, and in special filing situations as determined by the Service's Headquarters. If all of the beneficiaries covered by an H-2A or H-2B labor certification have not been identified at the time a petition is filed, multiple petitions naming subsequent beneficiaries may be filed at different times with a copy of the same labor certification. Each petition must reference all previously filed petitions for that labor certification.

(iv) *Substitution of beneficiaries.* Beneficiaries may be substituted in and H-2B petitions that are approved for a group, or H-2B petitions that are approved for unnamed beneficiaries, or approved H-2B petitions where the job offered to the alien(s) does not require any education, training, and/or experience. To request a substitution, the petitioner shall, by letter and a copy of the petition's approval notice, notify the consular office at which the alien

will apply for a visa or the port of entry where the alien will apply for admission. Where evidence of the qualifications of beneficiaries is required in petitions for unnamed beneficiaries, the petitioner shall also submit such evidence to the consular office or port of entry prior to issuance of a visa or admission.

(v) *H-2A Petitions.* Special criteria for admission, extension, and maintenance of status apply to H-2A petitions and are specified in paragraph (h)(5) of this section. The other provisions of § 214.2(h) apply to H-2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (h)(5) of this section.

(3) *Petition for registered nurse (H-1A)*—(i) *General.* (A) For purposes of H-1A classification, the term “registered nurse” includes a foreign nurse who is or will be licensed or authorized by the State Board of Nursing to engage in professional nurse practice in the state of intended employment.

(B) A United States employer which provides health care services is referred to as a “facility,” and may file an H-1A petition for an alien nurse to perform the services of a registered nurse. A “facility” must also meet the Department of Labor's requirements as defined in 29 CFR part 504.”

(C) The position must involve nursing practice and require licensure or other authorization to practice as a registered nurse from the State Board of Nursing in the state of intended employment.

(D) A petition, application for change of status, or application for extension of stay for an H-1A nurse may be adjudicated only at the appropriate INS service center.

(ii) *Definition of registered nurse.* For purposes of H-1A classification, “registered nurse” shall mean a person who is or will be authorized by a State Board of Nursing to engage in registered nurse practice in a state or U.S. territory or possession, and who is or will be practicing at a facility which provides health care services.

(iii) *Beneficiary requirements.* An H-1A petition for a nurse shall be accompanied by evidence that the nurse:

(A) Has obtained a full and unrestricted license to practice nursing in

the country where the alien obtained nursing education, or has received nursing education in the United States or Canada;

(B) Has passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or has obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or has obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and

(C) Is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and is authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States.

(iv) *Petitioner requirements.* The petitioning facility shall submit the following with an H-1A petition:

(A) A current copy of the Department of Labor's (DOL) notice of acceptance of the filing of its attestation on Form ETA 9029,

(B) A statement that it will comply with the terms of its current attestation, and any attestations accepted by DOL for the duration of the alien's authorized period of stay,

(C) A statement describing any limitations which the laws of the state or jurisdiction of intended employment place on the nurse's services,

(D) A statement that notice of the filing of the petition has been provided by the employer to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations. A copy of the notice provided shall be submitted with the petitions, and

(v) *Licensure requirements.* (A) A nurse who is granted H-1A classification based on passage of the CGFNS examination must, upon admission to the United States, be able to obtain temporary licensure or other temporary authorization to practice as a registered nurse from the State Board of Nursing in the state of intended employment. A petition for such a nurse shall be approved initially for a period not to exceed one year.

(B) After admission to the United States, an H-1A nurse who does not hold a permanent state license must take and pass the examination for state licensure as a registered nurse within six months from the date of his or her initial admission to the United States. After this six-month period of time, the nurse must be granted permanent state licensure in order to maintain his or her eligibility for H-1A classification in the state of employment or any other state or territory of the United States.

(C) A nurse shall automatically lose his or her eligibility for H-1A classification if he or she is no longer performing the duties of a registered professional nurse. Such a nurse is not authorized to remain in employment unless he or she otherwise receives authorization from the Service.

(D) A nurse may be granted H-1A classification based on passage of the CGFNS examination only until he or she has been admitted to the United States, and has had an opportunity to take the state licensure examination for registered nurses.

(vi) *Other requirements.* (A) If the Secretary of Labor notifies the Service that a facility which employs nurses has failed to meet a condition in its attestation, or that there was a misrepresentation of a material fact in the attestation, the Service shall not approve petitions for or extend the stay of nurses to be employed by the facility for a period of one year from the date of receipt of such notice.

(B) If the facility's attestation expires, or is suspended or invalidated by DOL, the Service will not suspend or revoke the facility's approved petitions for nurses, if the facility has agreed to

comply with the terms of the attestation under which the nurses were admitted or subsequent attestations accepted by DOL for the duration of the nurses' authorized stay.

(4) *Petition for alien to perform services in a specialty occupation, services relating to a DOD cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling (H-1B)*—

(i)(A) *Types of H-1B classification.* An H-1B classification may be granted to an alien who:

(1) Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation;

(2) Based on reciprocity, will perform services of an exceptional nature requiring exceptional merit and ability relating to a DOD cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(3) Will perform services in the field of fashion modeling and who is of distinguished merit and ability.

(B) *General requirements for petitions involving a specialty occupation.* (1) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

(2) Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies

to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(3) If all of the beneficiaries covered by an H-1B labor condition application have not been identified at the time a petition is filed, petitions for newly identified beneficiaries may be filed at any time during the validity of the labor condition application using photocopies of the same application. Each petition must refer by file number to all previously approved petitions for that labor condition application.

(4) When petitions have been approved for the total number of workers specified in the labor condition application, substitution of aliens against previously approved openings shall not be made. A new labor condition application shall be required.

(5) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, the Service shall not approve petitions filed with respect to that employer under section 204 or 214(c) of the Act for a period of at least one year from the date of receipt of such notice.

(6) If the employer's labor condition application is suspended or invalidated by the Department of Labor, the Service will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations if the employer has certified to the Department of Labor that it will comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(C) *General requirements for petitions involving an alien of distinguished merit and ability in the field of fashion modeling.* H-1B classification may be granted to an alien who is of distinguished merit and ability in the field of fashion modeling. An alien of distinguished merit and ability in the field of fashion modeling is one who is prominent in the field of fashion modeling. The alien

must also be coming to the United States to perform services which require a fashion model of prominence.

(ii) *Definitions.*

*Prominence* means a high level of achievement in the field of fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of fashion modeling.

*Regonized authority* means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

- (1) The writer's qualifications as an expert;
- (2) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;
- (3) How the conclusions were reached; and
- (4) The basis for the conclusions supported by copies or citations of any research material used.

*Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

*United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

(iii) *Criteria for H-1B petitions involving a specialty occupation—(A) Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

(B) *Petitioner requirements.* The petitioner shall submit the following with an H-1B petition involving a specialty occupation:

- (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
- (2) A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
- (3) Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(A) of this section, and

(C) *Beneficiary qualifications.* To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification

which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

(D) *Equivalence to completion of a college degree.* For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to

the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien

has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term “abroad” refers to the alien’s last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

(iv) *General documentary requirements for H-1B classification in a specialty occupation.* An H-1B petition involving a specialty occupation shall be accompanied by:

(A) Documentation, certifications, affidavits, declarations, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is qualified to perform services in a specialty occupation as described in paragraph (h)(4)(i) of this section and that the services the beneficiary is to perform are in a specialty occupation. The evidence shall conform to the following:

(1) School records, diplomas, degrees, affidavits, declarations, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired.

(2) Affidavits or declarations made under penalty of perjury submitted by present or former employers or recognized authorities certifying as to the recognition and expertise of the beneficiary shall specifically describe the beneficiary’s recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(v) *Licensure for H classification—(A) General.* If an occupation requires a state or local license for an individual

to fully perform the duties of the occupation, an alien (except an H-1A nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) *H-1A nurses.* For purposes of licensure, H-1A nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.

(E) *Limitation on approval of petition.* Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

(vi) *Criteria and documentary requirements for H-1B petitions involving DOD*

*cooperative research and development projects or coproduction projects—(A) General. (1)* For purposes of H-1B classification, services of an exceptional nature relating to DOD cooperative research and development projects or coproduction projects shall be those services which require a baccalaureate or higher degree, or its equivalent, to perform the duties. The existence of this special program does not preclude the DOD from utilizing the regular H-1B provisions provided the required guidelines are met.

(2) The requirements relating to a labor condition application from the Department of Labor shall not apply to petitions involving DOD cooperative research and development projects or coproduction projects.

(B) *Petitioner requirements. (1)* The petition must be accompanied by a verification letter from the DOD project manager for the particular project stating that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by DOD. Details about the specific project are not required.

(2) The petitioner shall provide a general description of the alien's duties on the particular project and indicate the actual dates of the alien's employment on the project.

(3) The petitioner shall submit a statement indicating the names of aliens currently employed on the project in the United States and their dates of employment. The petitioner shall also indicate the names of aliens whose employment on the project ended within the past year.

(C) *Beneficiary requirement.* The petition shall be accompanied by evidence that the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which he or she will be performing services in accordance with paragraph (h)(4)(iii)(C) and/or (h)(4)(iii)(D) of this section.

(vii) *Criteria and documentary requirements for H-1B petitions for aliens of distinguished merit and ability in the field of fashion modeling—(A) General.* Prominence in the field of fashion modeling may be established in the case of an individual fashion model. The work

which a prominent alien is coming to perform in the United States must require the services of a prominent alien. A petition for an H-1B alien of distinguished merit and ability in the field of fashion modeling shall be accompanied by:

(1) Documentation, certifications, affidavits, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a fashion model of distinguished merit and ability. Affidavits submitted by present or former employers or recognized experts certifying to the recognition and distinguished ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(2) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(B) *Petitioner's requirements.* To establish that a position requires prominence, the petitioner must establish that the position meets one of the following criteria:

(1) The services to be performed involve events or productions which have a distinguished reputation;

(2) The services are to be performed for an organization or establishment that has a distinguished reputation for, or record of, employing prominent persons.

(C) *Beneficiary's requirements.* A petitioner may establish that a beneficiary is a fashion model of distinguished merit and ability by the submission of two of the following forms of documentation showing that the alien:

(1) Has achieved national or international recognition and acclaim for outstanding achievement in his or her field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(2) Has performed and will perform services as a fashion model for employers with a distinguished reputation;

(3) Has received recognition for significant achievements from organizations, critics, fashion houses, modeling



agencies, or other recognized experts in the field; or

(4) Commands a high salary or other substantial remuneration for services evidenced by contracts or other reliable evidence.

(viii) *Criteria and documentary requirements for H-1B petitions for physicians—(A) Beneficiary's requirements.* An H-1B petition for a physician shall be accompanied by evidence that the physician:

(1) Has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires the license or authorization, and

(2) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(B) *Petitioner's requirements.* The petitioner must establish that the alien physician:

(1) Is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency, and that no patient care will be performed, except that which is incidental to the physician's teaching or research; or

(2) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) or is a graduate of a United States medical school; and

(i) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(ii) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

(C) *Exception for physicians of national or international renown.* A physician who is a graduate of a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements of paragraph (h)(4)(viii)(B) of this section.

(5) *Petition for alien to perform agricultural labor or services of a temporary or seasonal nature (H-2A)—(i) Filing a petition—(A) General.* An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification. However, if a certification is denied, domestic labor subsequently fails to appear at the worksite, and the Department of Labor denies an appeal under section 216(e)(2) of the Act, the written denial of appeal shall be considered a certification for this purpose if filed with evidence which establishes that qualified domestic labor is unavailable. An H-2A petition may be filed by either the employer listed on the certification, the employer's agent, or the association of United States agricultural producers named as a joint employer on the certification.

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same certification may not exceed the number of workers indicated on that document. A single petition can include more than one beneficiary if the total number does not exceed the number of positions indicated on the relating certification, and all beneficiaries will obtain a visa at the same consulate or are not required to have a visa and will apply for admission at the same port of entry.

(C) *Unnamed beneficiaries.* The sole beneficiary of an H-2A petition must be named in the petition. In a petition for multiple beneficiaries, each must be named unless he or she is not named in the certification and is outside the United States. Unnamed beneficiaries must be shown on the petition by total number.

(D) *Evidence.* An H-2A petitioner must show that the proposed employment qualifies as a basis for H-2A status, and that any named beneficiary qualifies for that employment. A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(A) of this section and, for each named beneficiary, the initial evidence required in paragraph (h)(5)(v) of this section.

(E) *Special filing requirements.* Where a certification shows joint employers, a

petition must be filed with an attachment showing that each employer has agreed to the conditions of H-2A eligibility. A petition filed by an agent must be filed with an attachment in which the employer has authorized the agent to act on its behalf, has assumed full responsibility for all representations made by the agent on its behalf, and has agreed to the conditions of H-2A eligibility.

(ii) *Effect of the labor certification process.* The temporary agricultural labor certification process determines whether employment is as an agricultural worker, whether it is open to U.S. workers, if qualified U.S. workers are available, the adverse impact of employment of a qualified alien, and whether employment conditions, including housing, meet applicable requirements. In petition proceedings a petitioner must establish that the employment and beneficiary meet the requirements of paragraph (h)(5) of this section. In a petition filed with a certification denial, the petitioner must also overcome the Department of Labor's findings regarding the availability of qualified domestic labor.

(iii) *Ability and intent to meet a job offer—(A) Eligibility requirements.* An H-2A petitioner must establish that each beneficiary will be employed in accordance with the terms and conditions of the certification, which includes that the principal duties to be performed are those on the certification, with other duties minor and incidental.

(B) *Intent and prior compliance.* Requirement intent cannot be established for two years after an employer or joint employer, or a parent, subsidiary or affiliate thereof, is found to have violated section 274(a) of the Act or to have employed an H-2A worker in a position other than that described in the relating petition.

(C) *Initial evidence.* Representations required for the purpose of labor certification are initial evidence of intent.

(iv) *Temporary and seasonal employment—(A) Eligibility requirements.* An H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern,

such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

(B) *Effect of Department of Labor findings.* In temporary agricultural labor certification proceedings the Department of Labor separately tests whether employment qualifies as temporary or seasonal. Its finding that employment qualifies is normally sufficient for the purpose of an H-2A petition. However, notwithstanding that finding, employment will be found not to be temporary or seasonal where an application for permanent labor certification has been filed for the same alien, or for another alien to be employed in the same position, by the same employer or by its parent, subsidiary or affiliate. This can only be overcome by the petitioner's demonstration that there will be at least a six month interruption of employment in the United States after H-2A status ends. Also, eligibility will not be found, notwithstanding the issuance of a temporary agricultural labor certification, where there is substantial evidence that the employment is not temporary or seasonal.

(v) *The beneficiary's qualifications—(A) Eligibility requirements.* An H-2A petitioner must establish that any named beneficiary met the stated minimum requirements and was fully able to perform the stated duties when the application for certification was filed. It must be established at time of application for an H-2A visa, or for admission if a visa is not required, that any unnamed beneficiary either met these requirements when the certification was applied for or passed any certified aptitude test at any time prior to visa issuance, or prior to admission if a visa is not required.

(B) *Initial evidence of employment/job training.* A petition must be filed with evidence that at the required time the beneficiary met the certification's minimum employment and job training requirements. Initial evidence must be in the form of the past employer's detailed statement or actual employment

documents, such as company payroll or tax records. Alternately, a petitioner must show that such evidence cannot be obtained, and submit affidavits from people who worked with the beneficiary that demonstrate the claimed employment.

(C) *Initial evidence of education and other training.* A petition must be filed with evidence that at the required time each beneficiary met the certification's minimum post-secondary education and other formal training requirements. Initial evidence must be in the form of documents, issued by the relevant institution or organization, that show periods of attendance, majors and degrees or certificates accorded.

(vi) *Petition agreements—(A) Consent and liabilities.* In filing an H-2A petition, a petitioner and each employer consents to allow access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify the Service in the manner specified within twenty-four hours if an H-2A worker absconds or if the authorized employment ends more than five days before the relating certification document expires, and to pay liquidated damages of ten dollars for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance where it cannot demonstrate that its H-2A worker either departed the United States or obtained authorized status based on another petition during the period of admission or within five days of early termination, whichever comes first.

(B) *Process.* Where evidence indicates noncompliance under paragraph (h)(5)(vi)(A) of this section, the petitioner shall be given written notice and given ten days to reply. If it does not demonstrate compliance, it shall be given written notice of the assessment of liquidated damages.

(C) *Failure to pay liquidated damages.* If liquidated damages are not paid within ten days of assessment, an H-2A petition may not be processed for that petitioner or any joint employer shown on the petition until such damages are paid.

(vii) *Validity.* An approved H-2A petition is valid through the expiration of the relating certification for the purpose of allowing a beneficiary to seek issuance of an H-2A nonimmigrant visa, admission or an extension of stay for the purpose of engaging in the specific certified employment.

(viii) *Admission—(A) Effect of violation of status.* An alien may not be accorded H-2A status who the Service finds to have violated the conditions of H-2A status within the prior five years. H-2A status is violated by remaining beyond the specific period of authorized stay or by engaging in unauthorized employment.

(B) *Period of admission.* Notwithstanding paragraph (h)(13) of this section, and except as provided in paragraph (h)(5)(ix)(C) of this section, an alien admissible as an H-2A shall be admitted for the period of the approved petition plus a period of up to one week before the beginning of the approved period for the purpose of travel to the worksite, and a period following the expiration of the H-2A petition equal to the validity period of the petition, but not more than ten days, for the purpose of departure or extension based on a subsequent offer of employment. However, this extended admission period does not affect the beneficiary's employment authorization. Such authorization only applies to the specific employment indicated in the relating petition, for the specific period of time indicated.

(C) *Limits on an individual's stay.* An alien's stay as an H-2A is limited by the term of an approved petition. An alien may remain longer to engage in other qualifying temporary agricultural employment by obtaining an extension of stay. However, an individual who has held H-2A status for a total of three years may not again be granted H-2A status, or other nonimmigrant status based on agricultural activities, until such time as he or she remains outside the United States for an uninterrupted period of six months. An absence can interrupt the accumulation of time spent as an H-2A. If the accumulated stay is eighteen months or less, an absence is interruptive if it lasts for at least three months. If more

than eighteen months stay has been accumulated, an absence is interruptive if it lasts for at least one-sixth the accumulated stay. Eligibility under this subparagraph will be determined in admission, change of status or extension proceedings. An alien found eligible for a shorter period of H-2A status than that indicated by the petition due to the application of this subparagraph shall only be admitted for that abbreviated period.

(ix) *Substitution of beneficiaries after admission.* An H-2A petition may be filed to replace H-2A workers whose employment was terminated early. The petition must be filed with a copy of the certification document, a copy of the approval notice covering the workers for which replacements are sought, and other evidence required by paragraph (h)(5)(i)(D) of this section. It must also be filed with a statement giving each terminated worker's name, date and country of birth, termination date, and evidence the worker has departed the United States. A petition for a replacement may not be approved where the requirements of paragraph (h)(5)(vi) of this section have not been met. A petition for replacements does not constitute the notice that an H-2A worker has absconded or has ended authorized employment more than five days before the relating certification expires.

(x) *Extensions without labor certification.* A single H-2A petition may be extended without a certification if it is based on approval of the alien's application for extension of stay for a continuation of the employment authorized by the approval of a previous H-2A petition filed with a certification (but not a certification extension granted under 20 CFR 655.106(c)(3)), and the proposed continuation of employment will last no longer than the previously authorized employment and also will not last longer than two weeks.

(6) *Petition for alien to perform temporary nonagricultural services or labor (H-2B)—(i) General.* An H-2B nonagricultural temporary worker is an alien who is coming temporarily to the United States to perform temporary services or labor, is not displacing United States workers capable of performing such services or labor, and

whose employment is not adversely affecting the wages and working conditions of United States workers.

(ii) *Temporary services or labor—(A) Definition.* Temporary services or labor under the H-2B classification refers to any job in which the petitioner's need for the duties to be performed by the employee(s) is temporary, whether or not the underlying job can be described as permanent or temporary.

(B) *Nature of petitioner's need.* As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need:

(1) *One-time occurrence.* The petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

(2) *Seasonal need.* The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

(3) *Peakload need.* The petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

(4) *Intermittent need.* The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but

occasionally or intermittently needs temporary workers to perform services or labor for short periods.

(iii) *Procedures.* (A) Prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the petitioning employer shall apply for a temporary labor certification with the Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

(B) An H-2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent. For purposes of paragraph (h) of this section, a foreign employer is any employer who is not amendable to service of process in the United States. A foreign employer may not directly petition for an H-2B nonimmigrant but must use the services of a United States agent to file a petition for an H-2B nonimmigrant. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(6)(iv) or (h)(6)(v) of this section.

(D) The Secretary of Labor and the Governor of Guam shall separately establish procedures for administering the temporary labor certification program under his or her jurisdiction.

(E) After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on I-129, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction in the area of intended employment.

(iv) *Labor certifications, except Guam—*  
(A) *Secretary of Labor's determination.* An H-2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by a labor certification determination that is either:

(1) A certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and the prevailing wages and working conditions of U.S. workers in the occupation.

(B) *Validity of the labor certification.* The Secretary of Labor may issue a temporary labor certification for a period of up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certifications filed under section 101(a)(15)(H)(ii)(b) of the Act for employment in the United States Virgin Islands may be approved only for entertainers and athletes and only for periods not to exceed 45 days.

(D) *Attachment to petition.* If the petitioner receives a notice from the Secretary of Labor that certification cannot be made, a petition containing countervailing evidence may be filed with the director. The evidence must show that qualified workers in the United States are not available, and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such

evidence submitted will be considered in adjudicating the petition.

(E) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate for the occupation of the United States, and each of the reasons why the Secretary of Labor could not grant a labor certification. The petitioner may also submit other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(v) *Labor certification for Guam—(A) Governor of Guam's determination.* An H-2B petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either:

(1) A certification from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services, and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation.

(B) *Validity of labor certification.* The Governor of Guam may issue a temporary labor certification for a period up to one year.

(C) *Attachments to petition.* If the employer receives a notice from the Governor of Guam that certification cannot be made, a petition containing countervailing evidence may be filed with the director. The evidence must show that qualified workers in the United States are not available, and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(D) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of United States

workers, the prevailing wage rate, and each of the reasons why the Governor of Guam could not make the required certification. The petitioner may also provide any other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall, in consultation with the Service, establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(1) *Prevailing wage and working conditions.* The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the system includes utilization of advisory opinions and consultations, the opinions must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(2) *Availability of United States workers.* The system for determining availability of qualified United States workers must require the prospective employer to:

(i) Advertise the availability of the position for a minimum of three consecutive days in the newspaper with the largest daily circulation on Guam;

(ii) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications from the armed forces of the United States and those in the entertainment industry, the 30-day period may be reduced by the Governor to 10 days;

(iii) Conduct appropriate recruitment in other areas of the United and its territories if sufficient qualified United States construction workers are not available on Guam to fill a job. The

Governor of Guam may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(iv) Report to the appropriate agency the names of all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(v) Offer all special considerations, such as housing and transportation expenses, to all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(vi) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor; and

(vii) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam—(1) Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this section, the Commissioner shall publish them as a notice in the FEDERAL REGISTER and the Governor shall publish them as a public record in Guam.

(2) *Approval of construction wage rates.* The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical data on temporary labor certification workload and determinations. This in-

formation shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam—(1) General.* A temporary labor certification issued by the Governor of Guam may be invalidated by a director if it is determined by the director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the director determines that the certification involved gross error.

(2) *Notice of intent to invalidate.* If the director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 30 days in which to file a written response in rebuttal to the notice of intent. The director shall consider all evidence submitted upon rebuttal in reaching a decision.

(3) *Appeal of invalidation.* An employer may appeal the invalidation of a temporary labor certification in accordance with part 103 of this chapter.

(vi) *Evidence for H-2B petitions.* An H-2B petition shall be accompanied by:

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made, issued by the Secretary of Labor or the Governor of Guam, as appropriate;

(B) *Countervailing evidence.* Evidence to rebut the Secretary of Labor's or the Governor of Guam's notice that certification cannot be made, if appropriate;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary; and

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or intermittent. If the need is seasonal,

peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad, if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term "abroad" means the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for the alien obtaining or continuing H-2B status.

(vii) *Traded professional H-2B athletes.* In the case of a professional H-2B athlete who is traded from one organization or another organization, employment authorization for the player will automatically continue for a period of 30 days after the player's acquisition by the new organization, within which time the new organization is expected to file a new Form I-129 for H-2B nonimmigrant classification. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid H-2B status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(7) *Petition for alien trainee or participant in a special education exchange visitor program (H-3)*—(i) *Alien trainee.* The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as agriculture, commerce, communications, finance, government, transpor-

tation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H-3 classification for a nurse who is not H-1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(1) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada; and

(2) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence required for petition involving alien trainee*—(A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and



(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(iv) *Petition for participant in a special education exchange visitor program—*(A) *General Requirements.* (1) The H-3 participant in a special education training program must be coming to the United States to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) The petition must be filed by a facility which has professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the special education exchange visitor program.

(3) The requirements in this section for alien trainees shall not apply to petitions for participants in a special education exchange visitor program.

(B) *Evidence.* An H-3 petition for a participant in a special education exchange visitor program shall be accompanied by:

(1) A description of the training program and the facility's professional staff and details of the alien's participation in the training program (any custodial care of children must be incidental to the training), and

(2) Evidence that the alien participant is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

(8) *Numerical limits—*(i) *Limits on affected categories.* During each fiscal year, the total number of aliens who can be provided nonimmigrant classification is limited as follows:

(A) Aliens classified as H-1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed:

(1) 115,000 in fiscal year 1999;

(2) 115,000 in fiscal year 2000;

(3) 107,500 in fiscal year 2001; and

(4) 65,000 in each succeeding fiscal year.

(B) Aliens classified as H-1B nonimmigrants to work for DOD research

and development projects or coproduction projects may not exceed 100 at any time.

(C) Aliens classified as H-2B nonimmigrants may not exceed 66,000.

(D) Aliens classified as H-3 nonimmigrant participants in a special education exchange visitor program may not exceed 50.

(ii) *Procedures.* (A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Act shall be counted for purposes of the numerical limit. Requests for petition extension or extension of an alien's stay shall not be counted for the purpose of the numerical limit. The spouse and children of principal aliens classified as H-4 nonimmigrants shall not be counted against the numerical limit.

(B) Numbers will be assigned temporarily to each alien (or job opening(s) for aliens in petitions with unnamed beneficiaries) included in a new petition in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Service Headquarters Adjudications shall assign numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States.

(D) When an approved petition is not used because the beneficiary(ies) does not apply for admission to the United States, the petitioner shall notify the Service Center Director who approved the petition that the number(s) has not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and the unused number(s) shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year.

(9) *Approval and validity of petition—*  
(i) *Approval.* The director shall consider

all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval shall be as follows:

(A) The approval notice shall include the beneficiary's(ies') name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in whole or in part. The approval notice shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new H petition is approved before the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(C) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(9)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The initial approval period of an H petition shall conform to the limits prescribed as follows:

(A)(1) *H-1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to

three years but may not exceed the validity period of the labor condition application.

(2) *H-1B petition involving a DOD research and development or coproduction project.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien involved in a DOD research and development project or a coproduction project shall be valid for a period of up to five years.

(3) *H-1B petition involving an alien of distinguished merit and ability in the field of fashion modeling.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien of distinguished merit and ability in the field of fashion modeling shall be valid for a period of up to three years.

(B) *H-2B petition—(1) Labor certification attached.* If a certification by the Secretary of Labor or the Governor of Guam is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii)(B) of the Act, the approval of the petition shall be valid for a period of up to one year.

(2) *Notice that certification cannot be made attached—(i) Countervailing evidence.* If a petition is submitted containing a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, and is not accompanied by countervailing evidence, the petitioner shall be informed that he or she may submit the countervailing evidence in accordance with paragraphs (h)(6)(iii)(E) and (h)(6)(iv)(D) of this section.

(ii) *Approval.* In any case where the director decides that approval of the H-2B petition is warranted despite the issuance of a notice by the Secretary of Labor or the Governor of Guam that certification cannot be made, the approval shall be certified by the Director to the Commissioner pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented by telephone to the Director, Administrative Appeals Office, Headquarters. If approved, the petition is valid for the period of established need not to exceed one year. There is no appeal from a decision which has been certified to the Commissioner.

(C)(1) *H-3 petition for alien trainee.* An approved petition for an alien trainee classified under section

101(a)(15)(H)(iii) of the Act shall be valid for a period of up to two years.

(2) *H-3 petition for alien participant in a special education training program.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act as a participant in a special education exchange visitor program shall be valid for a period of up to 18 months.

(iv) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to H nonimmigrant classification, subject to the same period of admission and limitations as the beneficiary, if they are accompanying or following to join the beneficiary in the United States. Neither the spouse nor a child of the beneficiary may accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.

(10) *Denial of petition—(i) Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial, and of his or her right to appeal the denial of the petition under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) *Revocation of approval of petition—(i) General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed

when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

(iii) *Revocation on notice—(A) Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

(2) The statement of facts contained in the petition was not true and correct; or

(3) The petitioner violated terms and conditions of the approved petition; or

(4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(12) *Appeal of a denial or a revocation of a petition—(i) Denial.* A petition denied in whole or in part may be appealed under part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(13) *Admission—(i) General.* (A) A beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(B) When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15)(H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to spend time abroad.

(ii) *H-1A limitation on admission.* An alien who was previously accorded H-1A nonimmigrant status, which expired on or before October 11, 1996, may not be admitted to the United States after October 11, 1996, in order to apply for an extension of authorized stay as provided in Public Law 104-302. Except as provided in paragraph (15)(ii)(A) of this subsection, and H-1A alien who has spent 5 years in the United States under section 101(a)(15)(H) of the Act may not change status, or be readmitted to the United States in any H classification unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

(iii) *H-1B limitation on admission.* (A) *Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An H-1B alien in a specialty occupation or an alien of distinguished merit and ability who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted

to the United States under section 101(a)(15) (H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(B) *Alien involved in a DOD research and development or coproduction project.* An H-1B alien involved in a DOD research and development or coproduction project who has spent 10 years in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) or (L) of the Act to perform services involving a DOD research and development project or coproduction project. A new petition or change of status under section 101(a)(15) (H) or (L) of the Act may not be approved for such an alien unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(iv) *H-2B and H-3 limitation on admission.* An H-2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act; an H-3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H-3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

(v) *Exceptions.* The limitations in paragraph (h)(13)(ii) through (h)(13)(iv) of this section shall not apply to H-1A, H-1B, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this

exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(14) *Extension of visa petition validity.* The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not required unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired.

(15) *Extension of stay—(i) General.* The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa. When the total period of stay in an H classification has been reached, no further extensions may be granted.

(ii) *Extension periods—(A) H-1A extension of stay.* An alien who previously entered the United States pursuant to an H-1A visa may receive an extension of H-1A temporary stay until September 30, 1997, provided that the alien was within the United States in valid H-1A classification on or after September 1, 1995, regardless of whether the alien continued to work as a registered nurse after September 1, 1995; that the alien's period of H-1A temporary stay has expired or would expire

before September 30, 1997; and, if the alien was not in valid H-1A nonimmigrant status on October 11, 1996, that the alien was within the United States on October 11, 1996. An extension of stay may not be granted to an H-1A nonimmigrant alien beyond September 30, 1997. An H-1A alien granted an extension of stay, and the spouse and child of such nonimmigrant, shall be considered to have maintained nonimmigrant status through September 30, 1997, for all purposes under the Immigration and Nationality Act, as amended. Public Law 104-302 does not apply to an H-1A alien who otherwise failed to maintain his or her valid H-1A nonimmigrant status or has changed from H-1A to another nonimmigrant status. A request for an extension of stay for an H-1A nonimmigrant must be filed on Form I-129, Petition for Nonimmigrant Worker, at the appropriate Service Center with the following:

(1) Evidence that the alien was employed as a registered nurse on September 1, 1995:

(2) Evidence that the beneficiary is licensed to practice as a registered nurse in the state of intended employment;

(3) Evidence that the alien was within the United States on or after September 1, 1995. For purposes of this provision, an alien will be deemed to have been within the United States on September 1, 1995, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H-1A classification pursuant to an unexpired H-1A visa; and

(4) If the alien was not in valid H-1A nonimmigrant status on October 11, 1996, evidence that the alien was within the United States on October 11, 1996. For purposes of this provision, an alien will be deemed to have been within the United States on October 11, 1996, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H-1A classification pursuant to an unexpired H-1A visa.

(B) *H-1B extension of stay—(1) Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An extension of stay

may be authorized for a period of up to three years for a beneficiary of an H-1B petition in a specialty occupation or an alien of distinguished merit and ability. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation.

(2) *Alien in a DOD research and development or coproduction project.* An extension of stay may be authorized for a period up to five years for the beneficiary of an H-1B petition involving a DOD research and development project or coproduction project. The total period of stay may not exceed 10 years.

(C) *H-2A or H-2B extension of stay.* An extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H-2A or H-2B worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(D) *H-3 extension of stay.* An extension of stay may be authorized for the length of the training program for a total period of stay as an H-3 trainee not to exceed two years, or for a total period of stay as a participant in a special education training program not to exceed 18 months.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification—(i) H-1 classification.* An alien may legitimately come to the United States for a temporary period as an H-1 nonimmigrant and, at the same time, lawfully seek to become a permanent resident of the United States provided he or she intends to depart voluntarily at the end of his or her authorized stay. The filing of an application for or approval of a permanent labor certification, an immigrant visa preference petition, or the filing of an application for adjustment of status for an H-1 nonimmigrant shall not be a basis for denying:

(A) An H-1 petition,

(B) A request to extend an H-1 petition.

(C) The H-1 alien's application (and that of their dependent family members) for admission.

(D) The H-1 alien's application (and that of their dependent family members) for change of status to a different H-1 or L classification, or a dependent of an H-1 or L nonimmigrant, or

(E) The H-1 alien's application for extension of stay, (and that of their dependent family members).

(ii) *H-2A, H-2B, and H-3 classification.* The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by or in a training position with the same petitioner, shall be a reason, by itself, to deny the alien's extension of stay.

(17) *Effect of a strike*—(i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place where the beneficiary is to be employed or trained, and that the employment of training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied.

(B) If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced the employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (h)(17)(i), the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been

certified by the Department of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other H nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by an H nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(18) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on Form I-797 whenever a visa petition, an extension of a visa petition, or an alien's extension of stay is approved under the H classification. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use a copy of Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(19) *Additional fee for filing certain H-1B petitions*—(i) A United States employer (other than an exempt employer as defined in paragraph (h)(19)(iii) of this section) who files a Form I-129, on or after December 1, 1998, and before October 1, 2001, must include the additional fee required in §103.7(b)(1) of this

chapter, if the petition is filed for any of the following purposes:

(A) An initial grant of H-1B status under section 101(a)(15)(H)(i)(b) of the Act;

(B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or

(C) Authorization for a change in employers, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) A petitioner must submit the \$110 filing fee and additional \$500 filing fee in a single remittance totaling \$610. Payment of the \$610 sum (\$110 filing fee and additional \$500 filing fee) must be made at the same time to constitute a single remittance. A petitioner may submit two checks, one in the amount of \$500 and the other in the amount of \$110. The Service will accept remittances of the \$500 fee only from the United States employer or its representative of record, as defined under 8 CFR part 292 and 8 CFR 103.2(a).

(iii) The following exempt organizations are not required to pay the additional fee:

(A) *An institution of higher education*, as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity*. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(C) *A nonprofit research organization or governmental research organization*. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does

not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

(iv) *Non-profit or tax exempt organizations*. For purposes of paragraphs (h)(19)(iii) (B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

(v) *Filing situations where the \$500 filing fee is not required*. The \$500 filing fee is not required:

(A) If the petition is an amended H-1B petition that does not contain any requests for an extension of stay;

(B) If the petition is an H-1B petition filed for the sole purpose of correcting a Service error; or

(C) If the petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the \$500 filing fee was paid on the initial petition or the first extension of stay.

(vi) *Petitioners required to file Form I-129W*. All petitioners must submit Form I-129W with the appropriate supporting documentation with the petition for an H-1B nonimmigrant alien. Petitioners who do not qualify for a fee exemption are required only to fill our Part A of Form I-129W.

(vii) *Evidence to be submitted in support of the Form I-129W*. (A) Employer claiming to be exempt. An employer claiming to be exempt from the \$500 filing fee must complete both Parts A and B of Form I-129W along with Form



I-129. The employer must also submit evidence as described on Form I-129W establishing that it meets one of the exemptions described at paragraph (h)(19)(iii) of this section. A United States employer claiming an exemption from the \$500 filing fee on the basis that it is a non-profit research organization must submit evidence that it has tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6). All other employers claiming an exemption must submit a statement describing why the organization or entity is exempt.

(B) Exempt filing situations. Any non-exempt employer who claims that the \$500 filing fee does not apply with respect to a particular filing for one of the reasons described in §214.2(h)(19)(v), must submit a statement describing why the filing fee is not required.

(i) *Representatives of information media.* The admission of an alien of the class defined in section 101(a)(15)(I) of the Act constitutes an agreement by the alien not to change the information medium or his or her employer until he or she obtains permission to do so from the district director having jurisdiction over his or her residence. An alien classified as an information media nonimmigrant (I) may be authorized admission for the duration of employment.

(j) *Exchange aliens*—(1) *General*—(i) *Exchange alien* means a nonimmigrant admitted under section 101(a)(15)(J) of the Act or who acquired such status, or who acquired exchange-visitor status under the United States Information and Education Exchange Act. Any exchange alien coming to the United States as a participant in a program designated under section 101(a)(15)(J) of the Act and accompanying spouse and minor children shall not be admitted without submitting a completely executed Form IAP-66. The spouse and minor children following to join the participant shall not be admitted without a copy of current Form IAP-66 endorsed by the program sponsor indicating the expiration of stay date as shown on Form I-94. Any alien seeking to change nonimmigrant status to exchange visitor status shall file Form I-506 and attach a valid Form IAP-66.

(ii) *Admission.* The initial admission of an exchange alien, spouse, and children may not exceed the period specified on Form IAP-66, plus a period of 30 days for the purpose of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the United States Information Agency published at 22 CFR 514.23 give general limitations on the length of stay of the various classes of exchange visitors. A spouse or child (J-2) may not be admitted for longer than the principal exchange alien (J-1).

(iii) *Readmission.* An exchange alien may be readmitted to the United States for the remainder of the time authorized on Form I-94, without presenting Form IAP-66, if the alien is returning from a visit solely to foreign contiguous territory or adjacent islands after an absence of less than 30 days and if the original Form I-94 is presented. All other exchange aliens must present a valid Form IAP-66. An original Form IAP-66 or copy three (the pink copy) of a previously issued form presented by an exchange alien returning from a temporary absence shall be retained by the exchange alien for re-entries during the balance of the alien's stay.

(iv) *Extensions of Stay.* If an exchange alien requires an extension beyond the initial admission period, the alien shall apply by submitting a new Form IAP-66 which indicates the date to which the alien's program is extended. The extension may not exceed the period specified on Form IAP-66, plus a period of 30 days for the purpose of travel. Extensions of stay for the alien's spouse and children require, as an attachment to Form IAP-66, Form I-94 for each dependent, and a list containing the names of the applicants, dates and places of birth, passport numbers, issuing countries, and expiration dates. An accompanying spouse or child may not be granted an extension of stay for longer than the principal exchange alien.

(v) *Employment.* (A) The accompanying spouse and minor children of a J-1 exchange visitor may accept employment only with authorization by the Immigration and Naturalization

Service. A request for employment authorization must be made on Form I-765, Application for Employment Authorization, with fee, as required by the Service, to the district director having jurisdiction over the J-1 exchange visitor's temporary residence in the United States. Income from the spouse's or dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J-1 principal alien.

(B) J-2 employment may be authorized for the duration of the J-1 principal alien's authorized stay as indicated on Form I-94 or a period of four years, whichever is shorter. The employment authorization is valid only if the J-1 is maintaining status. Where a J-2 spouse or dependent child has filed a timely application for extension of stay, only upon approval of the request for extension of stay may he or she apply for a renewal of the employment authorization on a Form I-765 with the required fee.

(vi) *Extension of duration of status.* The Commissioner may, by notice in the FEDERAL REGISTER, at any time she determines that the H-1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H-1B application, the duration of status of any J-1 alien on behalf of whom an employer has timely filed an application for change of status to H-1B. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and is not subject to the 2-year foreign residence requirement at 212(e) of the Act. Any J-1 student whose duration of status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J-2 dependent aliens.

(2) *Special reporting requirement.* Each exchange alien participating in a program of graduate medical education or training shall file Form I-644 (Supplementary Statement for Graduate Medical Trainees) annually with the Service attesting to the conditions as specified on the form. The exchange alien shall also submit Form I-644 as an attachment to a completed Form IAP-66 when applying for an extension of stay.

(3) *Alien in cancelled programs.* When the approval of an exchange visitor program is withdrawn by the Director of the United States Information Agency, the district director shall send a notice of the withdrawal to each participant in the program and a copy of each such notice shall be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay may be obtained if the participant is accepted in another approved program and a Form IAP-66, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required.

(4) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training—(i) Requirements.* Any alien coming to the United States as an exchange visitor to participate in a program under which the alien will receive graduate medical education or training, or any alien seeking to change nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts of I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), and must be competent in oral and written English, and shall submit a completely executed and valid Form IAP-66.

(ii) *Exemptions.* From January 10, 1978 until December 31, 1983, any alien who has come to or seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or any alien who seeks to change nonimmigrant status for that purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) and (B)(ii)(I) of section 212(j)(1) of the Act if a substantial disruption in the health services provided by such program would result from not permitting the alien to participate in the program: *Provided* that the exemption will not increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1978.

(k) *Fiancées and fiances of United States citizens*—(1) *Petition and supporting documents.* To be classified as a fiancé or fiancée as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I-129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in §204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as

where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from non-immigrant to immigrant*—(i) *Non-immigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner

within 90 days of his or her admission to the United States pursuant to a valid K-1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (Form I-485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

(1) *Intracompany transferees*—(1) *Admission of intracompany transferees*—(i) *General.* Under section 101(a)(15)(L) of the Act, an alien who within the preceding three years has been employed abroad for one continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch, affiliate, or subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions. Cer-

tain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, affiliates, or subsidiaries specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) *Definitions*—(A) *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

(B) *Managerial capacity* means an assignment within an organization in which the employee primarily:

(1) Manages the organization, or a department, subdivision, function, or component of the organization;

(2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(C) *Executive capacity* means an assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component, or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(D) *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

(E) *Specialized knowledge professional* means an individual who has specialized knowledge as defined in paragraph (1)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the

United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the

United States partnership is also a member.

(M) *Director* means a Service Center director with delegated authority at 8 CFR 103.1.

(2) *Filing of petitions*—(i) Except as provided in paragraph (1)(2)(ii) and (1)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition on Form I-129, Petition for Non-immigrant Worker, only at the Service Center which has jurisdiction over the area where the alien will be employed, even in emergent situations. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office, and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed may result in a denial of the petition.

(ii) A United States petitioner which meets the requirements of paragraph (1)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I-129 with the director having jurisdiction over the area where the petitioner is located. The blanket petition shall be adjudicated and maintained at the appropriate Service Center. Approved blanket petition files shall be maintained indefinitely by that Service Center. The petitioner shall be the single representative for the qualifying organizations with which the Service will deal regarding the blanket petition.

(3) *Evidence for individual petitions*. An individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, in-

cluding a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii) (B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

(vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

(vii) If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

(viii) Such other evidence as the director, in his or her discretion, may deem necessary.

(4) *Blanket petitions*—(i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

(A) The petitioner and each of those entities are engaged in commercial trade or services;

(B) The petitioner has an office in the United States that has been doing business for one year or more;

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a United States work force of at least 1,000 employees.

(ii) Managers, executives, and specialized knowledge professionals employed by firms, corporations, or other entities which have been found to be qualifying organizations pursuant to an approved blanket petition may be classified as intracompany transferees and admitted to the United States as provided in paragraphs (1) (5) and (11) of this section.

(iii) When applying for a blanket petition, the petitioner shall include in the blanket petition all of its branches, subsidiaries, and affiliates which plan to seek to transfer aliens to the United States under the blanket petition. An individual petition may be filed by the petitioner or organizations in lieu of using the blanket petition procedure. However, the petitioner and other qualifying organizations may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility. Whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner shall advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

(iv) *Evidence*. A blanket petition filed on Form I-129 shall be accompanied by:

(A) Evidence that the petitioner meets the requirements of paragraph (1)(4)(i) of this section.

(B) Evidence that all entities for which approval is sought are qualifying organizations as defined in subparagraph (1)(1)(ii)(G) of this section.

(C) Such other evidence as the director, in his or her discretion, deems necessary in a particular case.

(5) *Certification and admission procedures for beneficiaries under blanket petition*.

(i) *Jurisdiction*. United States consular officers shall have authority to determine eligibility of individual beneficiaries outside the United States seeking L classification under blanket petitions, except for visa-exempt nonimmigrants. An application for a visa-exempt nonimmigrant seeking L classification under a blanket petition or by an alien in the United States applying for change of status to L classification under a blanket petition shall be filed with the Service office at which the blanket petition was filed.

(ii) *Procedures*. (A) When one qualifying organization listed in an approved blanket petition wishes to transfer an alien outside the United States to a qualifying organization in

the United States and the alien requires a visa to enter the United States, that organization shall complete Form I-129S, Certificate of Eligibility for Intracompany Transferee under a Blanket Petition, in an original and three copies. The qualifying organization shall retain one copy for its records and send the original and two copies to the alien. A copy of the approved Form I-797 must be attached to the original and each copy of Form I-129S.

(B) After receipt of Form I-797 and Form I-129S, a qualified employee who is being transferred to the United States may use these documents to apply for visa issuance with the consular officer within six months of the date on Form I-129S.

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I-129S, Certificate of Eligibility, and a copy of the approval notice, Form I-797, to the Service Center with which the blanket petition was filed.

(D) The consular or Service officer shall determine whether the position in which the alien will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular or Service officer shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the petition and was in a position as manager, executive, or specialized knowledge professional.

(E) Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with

the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records.

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on Form I-129S, retain one copy, return the original of I-129S to the Service office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien with the director having jurisdiction over the area of intended employment; the petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

(G) An alien admitted under an approved blanket petition may be reassigned to any organization listed in the approved petition without referral to the Service during his/her authorized stay if the alien will be performing virtually the same job duties. If the alien will be performing different job duties, the petitioner shall complete a new Certificate of Eligibility and send it for approval to the director who approved the blanket petition.

(6) *Copies of supporting documents.* The petitioner may submit a legible photocopy of a document in support of the visa petition, in lieu of the original document. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition—(i) General.* The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been



filed. If additional information is required from the petitioner, the 30 day processing period shall begin again upon receipt of the information. Only the Director of a Service Center may approve individual and blanket L petitions. The original Form I-797 received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (1)(13) of this section.

(A) *Individual petition*—(1) Form I-797 shall include the beneficiary's name and classification and the petition's period of validity.

(2) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's services, not to exceed three years, except where the beneficiary is coming to the United States to open or to be employed in a new office.

(3) If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (1)(14)(ii) of this section that it is doing business as defined in paragraph (1)(1)(ii)(H) of this section to extend the validity of the petition.

(B) *Blanket petition*—(1) Form I-797 shall identify the approved organizations included in the petition and the petition's period of validity.

(2) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(3) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(C) *Amendments*. The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligi-

bility under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents*. The spouse and unmarried minor children of the beneficiary are entitled to L non-immigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she has been granted employment authorization.

(8) *Denial of petition*—(i) *Notice of intent to deny*. When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Individual petition*. If an individual is denied, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial.

(iii) *Blanket petition*. If a blanket petition is denied in whole or in part, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial. If the petition is denied in part, the Service Center issuing the denial shall forward to the petitioner, along with the denial, a Form I-797 listing those organizations which were found to qualify. If the decision to deny is reversed on appeal, a new Form I-797 shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions*—(i) *General*. The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation*. The approval of any individual or blanket petition is automatically revoked if the petitioner withdraws the petition or

the petitioner fails to request indefinite validity of a blanket petition.

(iii) *Revocation on notice.* (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(1) One or more entities are no longer qualifying organizations;

(2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;

(3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;

(4) The statement of facts contained in the petition was not true and correct; or

(5) Approval of the petition involved gross error; or

(6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

(iv) *Status of beneficiaries.* If an individual petition is revoked, the beneficiary shall be required to leave the United States, unless the beneficiary has obtained other work authorization from the Service. If a blanket petition is revoked and the petitioner and beneficiaries already in the United States are otherwise eligible for L classification, the director shall extend the blanket petition for a period necessary to support the stay of those blanket L beneficiaries. The approval notice, Form I-171C, shall include only the names of qualifying organizations and covered beneficiaries. No new beneficiaries may be classified or admitted under this limited extension.

(10) *Appeal of denial or revocation of individual or blanket petition—(i)* A petition denied in whole or in part may be appealed under 8 CFR part 103. Since

the determination on the Certificate of Eligibility, Form I-129S, is part of the petition process, a denial or revocation of approval of an I-129S is appealable in the same manner as the petition.

(ii) A petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire while the alien is in the United States, the burden is on the petitioner to file for indefinite validity of the blanket petition or to file an individual petition in the alien's behalf to support the alien's status in the United States. The admission period for any alien under section 101(a)(15)(L) shall not exceed three years unless an extension of stay is granted pursuant to paragraph (1)(15) of this section.

(12) *L-1 limitation on period of stay—(i) Limits.* An alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in a managerial or executive capacity under section 101(a)(15) (L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15) (L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15) (L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for

the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five years in the United States as a professional with specialized knowledge or seven years in the United States as a manager or executive, unless the alien has met the requirements contained in this paragraph.

(ii) *Exceptions.* The limitations of paragraph (1)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Beneficiary's use of Form I-797 and Form I-129S*—(i) *Beneficiary of an individual petition.* The beneficiary of an individual petition who does not require a nonimmigrant visa may present a copy of Form I-797 at a port of entry to facilitate entry into the United States. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition (provided that the beneficiary is entering or reentering the United States) for entry and reentry to resume the same employment with the same petitioner (within the validity period of the petition) and to apply for an extension of stay. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-797 to apply for a new or revalidated visa during the validity period of the petition and to apply for an extension of stay.

(ii) *Beneficiary of a blanket petition.* Each alien seeking L classification and admission under a blanket petition shall present a copy of Form I-797 and a Form I-129S from the petitioner which identifies the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties for both the new and former positions, and the positions, dates, and locations of previous L stays in the United States. A current copy of Form I-797 and Form I-129S should be retained by the beneficiary and used for leaving and reentering the United States to resume employment with a qualifying organization during his/her authorized period of stay, for applying for a new or revalidated visa, and for applying for readmission at a port of entry. The alien may be readmitted even though reassigned to a different organization named on the Form I-797 than the one shown on Form I-129S if the job duties are virtually the same.

(14) *Extension of visa petition validity*—(i) *Individual petition.* The petitioner shall file a petition extension on Form I-129 to extend an individual petition under section 101(a)(15)(L) of the Act. Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(ii) *New offices.* A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the

number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

(iii) *Blanket petitions*—(A) *Extension procedure*. A blanket petition may only be extended indefinitely by filing a new Form I-129 with a copy of the previous approval notice and a report of admissions during the preceding three years. The report of admissions shall include a list of the aliens admitted under the blanket petition during the preceding three years, including positions held during that period, the employing entity, and the dates of initial admission and final departure of each alien. The petitioner shall state whether it still meets the criteria for filing a blanket petition and shall document any changes in approved relationships and additional qualifying organizations.

(B) *Other conditions*. If the petitioner in an approved blanket petition fails to request indefinite validity or if indefinite validity is denied, the petitioner and its other qualifying organizations shall seek L classification by filing individual petitions until another three years have expired; after which the petitioner may seek approval of a new blanket petition.

(15) *Extension of stay*. (i) In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. When the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons

while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

(16) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on L-1 classification*. An alien may legitimately come to the United States for a temporary period as an L-1 nonimmigrant and, at the same time, lawfully seek to become a permanent resident of the United States provided he or she intends to depart voluntarily at the end of his or her authorized stay. The filing of an application for or approval of a permanent labor certification, an immigrant visa preference petition, or the filing of an application of readjustment of status for an L-1 nonimmigrant shall not be the basis for denying:

(i) An L-1 petition filed on behalf of the alien,

(ii) A request to extend an L-1 petition which had previously been filed on behalf of the alien;

(iii) An application for admission as an L-1 nonimmigrant by the alien, or as an L-2 nonimmigrant by the spouse or child of such alien;

(iv) An application for change of status to H-1 or L-2 nonimmigrant filed

by the alien, or to H-1, H-4, or L-1 status filed by the L-2 spouse or child of such alien;

(v) An application for change of status to H-4 nonimmigrant filed by the L-1 nonimmigrant, if his or her spouse has been approved for classification as an H-1; or

(vi) An application for extension of stay filed by the alien, or by the L-2 spouse or child of such alien.

(17) *Filing of individual petitions and certifications under blanket petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA).* (i) *Individual petitions.* Except as provided in paragraph (1)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129 in conjunction with an application for admission of the citizen of Canada. Such filing may be made with an immigration officer at a Class A port of entry located on the United States-Canada land border or at a United States pre-clearance/pre-flight station in Canada. The petitioning employer need not appear, but Form I-129 must bear the authorized signature of the petitioner.

(ii) *Certification of eligibility for intracompany transferee under the blanket petition.* An immigration officer at a location identified in paragraph (1)(17)(i) of this section may determine eligibility of individual citizens of Canada seeking L classification under approved blanket petitions. At these locations, such citizens of Canada shall present the original and two copies of Form I-129S, Intracompany Transferee Certificate of Eligibility, prepared by the approved organization, as well as three copies of Form I-797, Notice of Approval of Nonimmigrant Visa Petition.

(iii) Nothing in this section shall preclude or discourage the advance filing of petitions and certificates of eligibility in accordance with paragraph (1)(2) of this section.

(iv) *Deficient or deniable petitions or certificates of eligibility.* If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary sup-

porting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

(v) *Spouse and dependent minor children accompanying or following to join.*

(A) The Canadian citizen spouse and Canadian citizen unmarried minor children of a Canadian citizen admitted under this paragraph shall be entitled to the same nonimmigrant classification and same length of stay subject to the same limits as the principal alien. They shall not be required to present visas, and they shall be admitted under the classification symbol L-2.

(B) A non-Canadian citizen spouse or non-Canadian citizen unmarried minor child shall be entitled to the same nonimmigrant classification and the same length of stay subject to the same limits as the principal, but shall be required to present a visa upon application for admission as an L-2 unless otherwise exempt under §212.1 of this chapter.

(C) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

(18) *Denial of intracompany transferee status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) If the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress where the beneficiary is to

be employed, and the temporary entry of the beneficiary may affect adversely the settlement of such labor dispute or the employment of any person who is involved in such dispute, a petition to classify a citizen of Mexico or Canada as an L-1 intracompany transferee may be denied. If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but not yet commenced employment, the approval of the petition may be suspended, and an application for admission on the basis of the petition may be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (1)(18)(i) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions.

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other L nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving work stoppage of workers; and

(C) Although participation by an L nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his

or her authorized period of stay has expired will be subject to deportation.

(m) *Students in established vocational or other recognized nonacademic institutions, other than in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission*. Except as provided in paragraph (m)(4) of this section, an alien seeking admission to the United States under section 101(a)(15)(M)(i) of the Act (as an M-1 student) and the student's accompanying M-2 spouse and minor children, if applicable, are not eligible for admission unless—

(A) The student presents a Certificate of Eligibility for Nonimmigrant (M-1) Student Status, Form I-20M-N, properly and completely filled out by the student and by the designated official of the school to which the student is destined and the documentary evidence of the student's financial ability required by that form; and

(B) It is established that the student is destined to and intends to attend the school specified in the student's visa unless the student is exempt from the requirement for presentation of a visa.

(ii) *Disposition of Form I-20M-N*. When a student is admitted to the United States, the inspecting officer shall forward Form I-20M-N to the Service's processing center. The processing center shall forward Form I-20N to the school which issued the form to notify the school of the student's admission.

(2) *Form I-20 ID copy*. The first time an M-1 student comes into contact with the Service for any reason, the student must present to the Service a Form I-20M-N properly and completely filled out by the student and by the designated official of the school the student is attending or intends to attend. The student will be issued a Form I-20 ID copy with his or her admission number. The student must have the Form I-20 ID copy with him or her at all times. If the student loses the Form I-20 ID copy, the student must request a new Form I-20 ID copy on Form I-102 from the Service office having jurisdiction over the school the student was last authorized to attend.

(3) *Spouse and minor children following to join student*. The M-2 spouse and minor children following to join an M-1 student are not eligible for admission

to the United States unless they present, as evidence that the student is or will, within sixty days, be enrolled in a full course of study or is engaged in approved practical training, either—

(i) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(ii) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

(4) *Temporary absence*—(i) *General*. An M-1 student returning to the United States from a temporary absence to attend the school which the student was previously authorized to attend must present either—

(A) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(B) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

(ii) *Student who transferred between schools*. If an M-1 student has been authorized to transfer between schools and is returning to the United States from a temporary absence in order to attend the school to which transfer was authorized as indicated on the student's Form I-20 ID copy, the name of the school to which the student is destined does not need to be specified in the student's visa.

(5) *Period of stay*. An alien admitted to the United States as an M-1 student is to be admitted for the period of time necessary to complete the course of study indicated on Form I-20M plus thirty days within which to depart from the United States or for one year, whichever is less. An alien granted a change of nonimmigrant classification to that of an M-1 student is to be given an extension of stay for the period of time necessary to complete the course of study indicated on Form I-20M plus thirty days within which to depart from the United States or for one year, whichever is less.

(6) *Conversion to M-1 status of students in established vocational or other recognized nonacademic institutions, other than in language training programs, who were F-1 students prior to June 1, 1982*. A student in an established vocational or other recognized nonacademic institution, other than in a language training program, who is in status as an F-1 student under section 101(a)(15)(F)(i) of the Act in effect prior to June 1, 1982 and the student's F-2 spouse and children, if applicable, are—

(i) Automatically converted to M-1 and M-2 status respectively; and

(ii) Limited to the authorized period of stay shown on their Forms I-94 plus thirty days within which to depart from the United States or to an authorized period of stay which expires one year from August 1, 1983, whichever is less.

(7) *Period of stay of student already in M-1 status*. A student in an established vocational or other recognized nonacademic institution, other than in a language training program, who is already in M-1 status and the student's M-2 spouse and children, if applicable, are limited to the authorized period of stay shown on their Forms I-94 plus thirty days within which to depart from the United States or to an authorized period of stay which expires one year from August 1, 1983, whichever is less.

(8) *Issuance of new I-94*. A non-immigrant whose status is affected by paragraph (m)(6) or (m)(7) of this section need not present Form I-94 to the Service. Either paragraph constitutes official notification to a student whose status is affected by it of that status. The Service will issue a new Form I-94 to an alien whose status is affected by either paragraph when that alien comes into contact with the Service.

(9) *Full course of study*. Successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A "full course of study" as required by section 101(a)(15)(M)(i) of the Act means—

(i) Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction

per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in § 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in § 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or

(iv) Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(10) *Extension of stay*—(i) *Eligibility*. An M-1 student may be granted an extension of stay if it is established that the student—

(A) Is a bona fide nonimmigrant currently maintaining student status; and

(B) Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application*. An M-1 student must apply for an extension of stay on Form I-538. A student's M-2 spouse and children desiring an extension of stay must be included in the application. A student's M-2 spouse or children are not eligible for an extension of stay unless the student is granted an extension of stay. The student must submit the application to the Service office having jurisdiction over the school the student was last authorized to attend at least fifteen days but not more than sixty days before the expiration of the student's currently authorized stay. The application must also be accompanied by the student's Form I-20 ID copy and the Forms I-94 of the student's spouse and children, if applicable.

(iii) *Period of stay*. If an application for extension of stay is granted, the student and the student's spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study plus thirty days within which to depart from the United States or for one year, whichever is less. An M-1 student who has been compelled by illness to interrupt or reduce a course of study may be granted an extension of stay without being required to change nonimmigrant classification provided that it is established that the student will pursue a full course of study upon recovery from the illness.

(11) *School transfer*—(i) *Eligibility*. An M-1 student may not transfer to another school after six months from the date the student is first admitted as, or changes nonimmigrant classification to that of, an M-1 student unless the student is unable to remain at the school to which the student was initially admitted due to circumstances beyond the student's control. An M-1 student may be otherwise eligible to transfer to another school if the student—

(A) Is a bona fide nonimmigrant;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;



(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer.

(ii) *Procedure.* An M–1 student must apply for permission to transfer between schools on Form I–538 accompanied by the student's Form I–20 ID copy and the Forms I–94 of the student's spouse and children, if applicable. The Form I–538 must also be accompanied by Form I–20M–N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. The student must submit the application for school transfer to the Service office having jurisdiction over the school the student was last authorized to attend. Sixty days after having filed an application for school transfer, an M–1 student may effect the transfer subject to approval or denial of the application. An M–1 student who transfers without complying with this regulation or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be retroactive to the date of filing the application, and the student will be granted an extension of stay for the period of time necessary to complete the course of study indicated on Form I–20M plus thirty days within which to depart from the United States or for one year, whichever is less. The adjudicating officer must endorse the name of the school to which transfer is authorized on the student's Form I–20 ID copy. The officer must also endorse Form I–20N to indicate that a school transfer has been authorized and forward it with Form I–20M to the Service's processing center for file updating. The processing center shall forward Form I–20N to the school to which the transfer has been authorized to notify the school of the action taken.

(iii) *Student who has not been pursuing a full course of study.* If an M–1 student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to stu-

dent status under paragraph (m)(16) of this section.

(12) *Change in educational objective.* An M–1 student may not change educational objective.

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, M–1 students may not accept employment. A student already in M–1 status on August 1, 1983 or a student converted to M–1 status under paragraph (m)(6) of this section who was authorized off-campus employment under the regulations previously in effect, however, may continue to work until the date of expiration of the previously authorized period of employment. The M–2 spouse and children of an M–1 student may not accept employment.

(14) *Practical training*—(i) *When practical training may be authorized.* Temporary employment for practical training may be authorized only after completion of the student's course of study.

(ii) *Application.* An M–1 student must apply for permission to accept employment for practical training on Form I–765, with the fee required by 8 CFR 103.7(b)(1), accompanied by his or her I–20 ID endorsed for practical training by the DSO. The application must be submitted prior to the expiration of the student's authorized period of stay and not more than sixty days before nor more than thirty days after completion of the course of study. The designated school official must certify on Form I–538 that—

(A) The proposed employment is recommended for the purpose of practical training;

(B) The proposed employment is related to the student's course of study; and

(C) Upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence.

(iii) *Duration of practical training.* When the student is authorized to engage in employment for practical training, he or she will be issued an employment authorization document. The M–1 student may not begin employment until he or she has been issued an employment authorization

document by the Service. One month of employment authorization will be granted for each four months of full-time study that the M-1 student has completed. However, an M-1 student may not engage in more than six months of practical training in the aggregate. The student will not be granted employment authorization if he or she cannot complete the requested practical training within six months.

(iv) *Temporary absence of M-1 student granted practical training.* An M-1 student who has been granted permission to accept employment for practical training and who temporarily departs from the United States, may be readmitted for the remainder of the authorized period indicated on the student's Form I-20 ID copy. The student must be returning to the United States to perform the authorized practical training. A student may not be readmitted to begin practical training which was not authorized prior to the student's departure from the United States.

(v) *Effect of strike or other labor dispute.* Authorization for all employment for practical training is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of Immigration and Naturalization or the Commissioner's designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means wherever the employer or joint employer does business.

(15) *Decision on application for extension, permission to transfer to another school, or permission to accept employment for practical training.* The Service shall notify the applicant of the decision and, if the application is denied, of the reason(s) for the denial. The applicant may not appeal the decision.

(16) *Reinstatement to student status—(i) General.* A district director may consider reinstating to M-1 student status an alien who was admitted to the United States as, or whose status was changed to that of, an M-1 student and who has overstayed the authorized period of stay or who has otherwise vio-

lated the conditions of his or her status only if—

(A) The student establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful M-1 status would result in extreme hardship to the student;

(B) The student makes a written request for reinstatement accompanied by a properly completed Form I-20M-N from the school the student is attending or intends to attend and the student's Form I-20 ID copy;

(C) The student is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20M-N;

(D) The student has not been employed without authorization; and

(E) The student is not deportable on any ground other than section 241(a)(1) (B), (C), or (D) of the Act.

(ii) *Decision.* If the district director reinstates the student, the district director shall endorse Form I-20N and the student's Form I-20 ID copy to indicate that the student has been reinstated, return the Form I-20 ID copy to the student, and forward Form I-20N with Form I-20M to the Service's processing center for file updating. The processing center shall forward Form I-20N to the school which the student is attending or intends to attend to notify the school of the student's reinstatement. If the district director does not reinstate the student, the student may not appeal that decision.

(17) *School code suffix on Form I-20M-N.* Each school system, other than a secondary school system approved prior to August 1, 1983 for attendance by M-1 students must assign permanent consecutive numbers to all schools within its system. The number of the school within the system which an M-1 student is attending or intends to attend must be added as a three-digit suffix following a decimal point after the school file number on Form I-20M-N (e.g. .001). If an M-1 student is attending or intends to attend a secondary school in a school system or a school which is not part of a school system, a suffix consisting of a decimal point followed by three zeros must be

added after the school file number on Form I-20M-N. The Service will assign school code suffixes to those schools it approves beginning August 1, 1983. No Form I-20M-N will be accepted after August 1, 1983 without the appropriate three-digit suffix.

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants*—(1) *Parent of special immigrant.* Upon application, a parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may be granted status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility is derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants.* Children of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I) (ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay.* A nonimmigrant granted (N) status shall be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status as an (N) nonimmigrant shall terminate on the date the child described in paragraph (n)(1) or (n)(2) of this section no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment.* A nonimmigrant admitted in or granted (N) status is authorized employment incident to (N) status without restrictions as to location or type of employment.

(o) *Aliens of extraordinary ability or achievement*—(1) *Classifications*—(i) *General.* Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(O)(i) of the Act as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary

achievement in the motion picture or television industry. Under section 101(a)(15)(O)(ii) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be classified as an accompanying alien who is coming to assist in the artistic or athletic performance of an alien admitted under section 101(a)(15)(O)(i) of the Act. The spouse or child of an alien described in section 101(a)(15)(O)(i) or (ii) of the Act who is accompanying or following to join the alien is entitled to classification pursuant to section 101(a)(15)(O)(iii) of the Act. These classifications are called the O-1, O-2, and O-3 categories, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O-1 or O-2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.* (A) An O-1 classification applies to:

(1) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

(2) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

(B) An O-2 classification applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1. The O-2 alien must:

(1) Be an integral part of the actual performances or events and possess critical skills and experience with the O-1 alien that are not of a general nature and which are not possessed by others; or

(2) In the case of a motion picture or television production, have skills and experience with the O-1 alien which are not of a general nature and which are

critical, either based on a pre-existing and longstanding working relationship or, if in connection with a specific production only, because significant production (including pre- and post-production) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(2) *Filing of petitions*—(i) *General*. Except as provided for in paragraph (o)(2)(iv)(A) of this section, a petitioner seeking to classify an alien as an O-1 or O-2 nonimmigrant shall file a petition on Form I-129, Petition for a Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. An O-1 or O-2 petition shall be adjudicated at the appropriate Service Center, even in emergency situations. Only one beneficiary may be included on an O-1 petition. O-2 aliens must be filed for on a separate petition from the O-1 alien. An O-1 or O-2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (o) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept services of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. An O alien may not petition for himself or herself.

(ii) *Evidence required to accompany a petition*. Petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

(iii) *Form of documentation*. The evidence submitted with an O petition shall conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

(B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or in the case of a motion picture or television production, the extraordinary achievement of the alien, shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(C) A legible photocopy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the Director.

(iv) *Other filing situations*—(A) *Services in more than one location*. A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

(B) *Services for more than one employer*. If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

(C) *Change of employer*. If an O-1 or O-2 alien in the United States seeks to

change employers, the new employer must file a petition and a request to extend the alien's stay with the Service Center having jurisdiction over the new place of employment. An O-2 alien may change employers only in conjunction with a change of employers by the principal O-1 alien. If the O-1 or O-2 petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

(D) *Amended petition.* The petitioner shall file an amended petition on Form I-129, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. In the case of a petition filed for an artist or entertainer, a petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition, provided the additional performances or engagements require an alien of O-1 caliber.

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

(1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The

itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien for the same events or performances, during the same period of time, and in the same location.

(G) *Traded professional O-1 athletes.* In the case of a professional O-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I-129. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid O-1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(3) *Petition for alien of extraordinary ability or achievement (O-1)*—(i) *General.* Extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in the case of an alien in the motion picture or television industry, must be established for an individual alien. An O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability, and that the alien meets the criteria in paragraph (o)(3)(iii) or (iv) of this section.

(ii) *Definitions.* As used in this paragraph, the term:

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

*Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

*Peer group* means a group or organization which is comprised of practitioners of the alien's occupation. If

there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

(iii) *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(iv) *Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(v) *Evidentiary criteria for an alien of extraordinary achievement in the motion picture or television industry.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead,

starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to other in the field, as evidenced by contracts or other reliable evidence.

(4) *Petition for an O-2 accompanying alien*—(i) *General*. An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business, or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien.

(ii) *Evidentiary criteria for qualifying as an O-2 accompanying alien*—(A) *Alien accompanying an O-1 artist or athlete of extraordinary ability*. To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.

(B) *Alien accompanying an O-1 alien of extraordinary achievement*. To qualify as an O-2 alien accompanying and O-1 alien involved in a motion picture or television production, the alien must have skills and experience with the O-1 alien which are not of a general nature and which are critical based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien. In the case of a specific motion picture or television production, the evidence shall establish that significant production has taken place outside the United States, and will take place inside the United States, and that the continuing participation of the alien is essential to the successful completion of the production.

(5) *Consultation*—(i) *General*. (A) Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved.

(B) Except as provided in paragraph (o)(5)(i)(E) of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor and/or management organization with expertise in the specific field involved.

(C) Except as provided in paragraph (o)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor, and/or management organization with expertise in the specific field involved. The advisory opinion shall be submitted along



with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization.

(D) Except as provided in paragraph (o)(5)(i)(E) and (G) of this section, written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory and are not binding on the Service.

(E) In a case where the alien will be employed in the field of arts, entertainment, or athletics, and the Service has determined that a petition merits expeditious handling, the Service shall contact the appropriate labor and/or management organization and request an advisory opinion if one is not submitted by the petitioner. The labor and/or management organization shall have 24 hours to respond to the Service's request. The Service shall adjudicate the petition after receipt of the response from the consulting organization. The labor and/or management organization shall then furnish the Service with a written advisory opinion within 5 days of the initiating request. If the labor and/or management organization fails to respond within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In a routine processing case where the petition is accompanied by a written opinion from a peer group, but the peer group is not a labor organization, the Director will forward a copy of the petition and all supporting documentation to the national office of the appropriate labor organization within 5 days of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization for purposes of this section. The labor organization will then have 15 days from receipt of the petition and supporting documents to submit to the Service a written advisory

opinion, comment, or letter of no objection. Once the 15-day period has expired, the Director shall adjudicate the petition in no more than 14 days. The Director may shorten this time in his or her discretion for emergency reasons, if no unreasonable burden would be imposed on any participant in the process. If the labor organization does not respond within 15 days, the Director will render a decision on the record without the advisory opinion.

(G) In those cases where it is established by the petitioner that an appropriate peer group, including a labor organization, does not exist, the Service shall render a decision on the evidence of record.

(ii) *Consultation requirements for an O-1 alien for extraordinary ability*—(A) *Content*. Consultation with a peer group in the area of the alien's ability (which may include a labor organization), or a person or persons with expertise in the area of the alien's ability, is required in an O-1 petition for an alien of extraordinary ability. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, it should describe the alien's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(B) *Waiver of consultation of certain aliens of extraordinary ability in the field of arts*. Consultation for an alien of extraordinary ability in the field of arts shall be waived by the Director in those instances where the alien seeks readmission to the United States to perform similar services within 2 years of the date of a previous consultation. The director shall, within 5 days of granting the waiver, forward a copy of the petition and supporting documentation to the national office of an appropriate labor organization. Petitioners desiring to avail themselves of the waiver should submit a copy of the

prior consultation with the petitioner and advise the Director of the waiver request.

(iii) *Consultation requirements for an O-1 alien of extraordinary achievement.* In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

(iv) *Consultation requirements for an O-2 accompanying alien.* Consultation with a labor organization with expertise in the skill area involved is required for an O-2 alien accompanying an O-1 alien of extraordinary ability. In the case of an O-2 alien seeking entry for a motion picture or television production, consultation with a labor organization and a management organization in the area of the alien's ability is required. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the opinion provided by the labor and/or management organization should describe the alien's essentiality to, and working relationship with, the O-1 artist or athlete and state whether there are available U.S. workers who can perform the support services. If the alien will accompany an O-1 alien involved in a motion picture or television production, the advisory opinion should address the alien's skills and experience with the O-1 alien

and whether the alien has a pre-existing longstanding working relationship with the O-1 alien, or whether significant production will take place in the United States and abroad and if the continuing participation of the alien is essential to the successful completion of the production. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(v) *Organizations agreeing to provide advisory opinions.* The Service will list in its Operations Instructions for O classification those peer groups, labor organizations, and/or management organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate peer groups, labor organizations, and management organizations. Additionally, the Service will list in its Operations Instructions those occupations or fields of endeavor where the nonexistence of an appropriate consulting entity has been verified.

(6) *Approval and validity of petition—*  
(1) *Approval.* The Director shall consider all of the evidence submitted and such other evidence as may be independently required to assist in the adjudication. The Director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary name, the classification, and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are as follows;

(A) If a new O petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner, not to exceed the limit specified by paragraph (c)(6)(iii) of this section or other Service policy.

(B) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved

petition and approval notice shall generally show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (o)(6)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity*—(A) *O–1 petition*. An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

(B) *O–2 petition*. An approved petition for an alien classified under section 101(a)(15)(O)(ii) of the Act shall be valid for a period of time determined to be necessary to assist the O–1 alien to accomplish the event or activity, not to exceed 3 years.

(iv) *Spouse and dependents*. The spouse and unmarried minor children of the O–1 or O–2 alien beneficiary are entitled to O–3 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(7) *Denial of petition*—(i) *Notice of intent to deny*. When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the Director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial*. The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103.

(8) *Revocation of approval of petition*—(i) *General*. (A) The petitioner shall im-

mediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(O) of the Act and paragraph (o) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the Director who approved the petition.

(B) The Director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation*. The approval of an unexpired petition is automatically revoked if the petitioner, or the named employer in a petition filed by an agent, goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation*. The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if is determined that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision*. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(9) *Appeal of a denial or a revocation of a petition*—(i) *Denial*. A denied petition may be appealed under 8 CFR part 103.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under 8 CFR part 103. Automatic revocations may not be appealed.

(10) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may only engage in employment during the validity period of the petition.

(11) *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on Form I-129, Petition for a Non-immigrant Worker, in order to continue or complete the same activities or events specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

(12) *Extension of stay—(i) Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The alien beneficiary must be physically present in the United States at the time of filing of the extension of stay. Even though the request to extend the petition and the alien's stay are combined on the petition, the Director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the Director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension period.* An extension of stay may be authorized in increments of up to 1 year for an O-1 or O-2 beneficiary to continue or complete the same event or activity for which he or she was admitted plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order.

(iii) *Denial of an extension of stay.* The denial of the request for the alien's extension of temporary stay may not be appealed.

(13) *Effect of approval of a permanent labor certification or filing of a preference petition on O classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O-1 petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O-1 non-immigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(14) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(O) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (o)(14)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified

by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as are all other O non-immigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by an O nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(15) *Use of approval notice, Form I-797.* The Service shall notify the petitioner of Form I-797 whenever a visa petition or an extension of a visa petition is approved under the O classification. The beneficiary of an O petition who does not require a nonimmigrant visa may present a copy of the approval notice at a Port-of-Entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission, and whose visa will have expired before the date of his or her intended return, may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. A copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(16) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(O) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and

the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term "abroad" means the alien's last place of residence prior to his or her entry into the United States.

(p) *Artists, athletes, and entertainers—*

(1) *Classifications—*(i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has not intention or abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under the nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team, or member of an internationally recognized entertainment group; under section 101(a)(15)(P)(ii) of the Act, who is coming to perform as an artist or entertainer under a reciprocal exchange program; under section 101(a)(15)(P)(iii) of the Act, as an alien who is coming solely to perform, teach, or coach under a program that is culturally unique; or under section 101(a)(15)(P)(iv) of the Act, as the spouse or child of an alien described in section 101(a)(15)(P) (i), (ii), or (iii) of the Act who is accompanying or following to join the alien. These classifications are called P-1, P-2, P-3, and P-4 respectively. The employer or sponsor must file a petition with the Service for review of the services to be performed and for determination of the alien's eligibility for P-1, P-2, or P-3 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classification—*(A) A P-1 classification applies to an alien who is coming temporarily to the United States:

(1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance, or

(2) To perform with, or as an integral and essential part of the performance

of, and entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

(B) A P-2 classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(C) A P-3 classification applies to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.

(2) *Filing of petitions*—(i) *General*. A P-1 petition for an athlete or entertainment group shall be filed by a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (p) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. Foreign employers seeking to employ a P-1 alien may not directly petition for the alien but must use a United States agent. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. A P-2 petition for an artist or entertainer in a reciprocal exchange program shall be filed by the United States labor organization which negotiated the reciprocal exchange agreement, the sponsoring organization, or a United States

employer. A P-3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or a United States employer. Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition. Except as provided for in paragraph (p)(2)(iv)(A) of this section, the petitioner shall file a P petition on Form I-129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. A P-1, P-2, or P-3 petition shall be adjudicated at the appropriate Service Center, even in emergency situations.

(ii) *Evidence required to accompany a petition for a P nonimmigrant*. Petitions for P nonimmigrant aliens shall be accompanied by the following:

(A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written consultation from a labor organization.

(iii) *Form of documentation*. The evidence submitted with an P petition should conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, establishment, or organization where the work has performed.

(B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or, in the case of a motion picture or television production, the extraordinary achievement of the alien, which shall specifically describe the alien's recognition and ability or achievement in factual terms.

The affidavit must also set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(C) A legible copy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the Director.

(iv) *Other filing situations*—(A) *Services in more than one location*. A petition which requires the alien to work in more than one location (*e.g.*, a tour) must include an itinerary with the dates and locations of the performances and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

(B) *Services for more than one employer*. If the beneficiary or beneficiaries will work for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an agent files the petition pursuant to paragraph (p)(2)(iv)(E) of this section.

(C) *Change of employer*—(1) *General*. If a P-1, P-2, or P-3 alien in the United States seeks to change employers or sponsors, the new employer or sponsor must file both a petition and a request to extend the alien's stay in the United States. The alien may not commence employment with the new employer or sponsor until the petition and request for extension have been approved.

(2) *Traded professional P-1 athletes*. In the case of a professional P-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I-129 for P-1 nonimmigrant classification. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid P-1 status, and employment shall continue to be authorized, until the pe-

tition is adjudicated. If the new petition is denied, employment authorization will cease.

(D) *Amended petition*. The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. A petitioner may add additional, similar or comparable performance, engagements, or competitions during the validity period of the petition without filing an amended petition.

(E) *Agents as petitioners*. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be

required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for a P nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(H) *Substitution of beneficiaries.* A petitioner may request substitution of beneficiaries in approved P-1, P-2, and P-3 petitions for groups. To request substitution, the petitioner shall submit a letter requesting such substitution, along with a copy of the petitioner's approval notice, to the consular office at which the alien will apply for a visa or the Port-of-Entry where the alien will apply for admission. Essential support personnel may not be substituted at consular offices or at Ports-of-entry. In order to add additional new essential support personnel, a new I-129 petition must be filed with the appropriate Service Center.

(3) *Definitions.* As used in this paragraph, the term:

*Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

*Competition, event, or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic

competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event. In the case of a P-2 petition, the event may be the duration of the reciprocal exchange agreement. In the case of a P-1 athlete, the event may be the duration of the alien's contract.

*Contract* means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

*Culturally unique* means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

*Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

*Group* means two or more persons established as one entity or unit to perform or to provide a service.

*Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

*Member of a group* means a person who is actually performing the entertainment services.

*Sponsor* means an established organization in the United States which will not directly employ a P-1, P-2, or P-3 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition.



*Team* means two or more persons organized to perform together as a competitive unit in a competitive event.

(4) *Petition for an internationally recognized athlete or member of an internationally recognized entertainment group (P-1)*—(i) *Types of classification*—(A) *P-1 classification as an athlete in an individual capacity.* A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

(B) *P-1 classification as a member of an entertainment group or an athletic team.* An entertainment group or athletic team consists of two or more persons who function as a unit. The entertainment group or athletic team as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services which require an internationally recognized entertainment group or athletic team. A person who is a member of an internationally recognized entertainment group or athletic team may be granted P-1 classification based on that relationship, but may not perform services separate and apart from the entertainment group or athletic team. An entertainment group must have been established for a minimum of 1 year, and 75 percent of the members of the group must have been performing entertainment services for the group for a minimum of 1 year.

(ii) *Criteria and documentary requirements for P-1 athletes*—(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved

international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

(2) Documentation of at least two of the following:

(i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(ii) Evidence of having participated in international competition with a national team;

(iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;

(iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;

(v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

(vi) Evidence that the individual or team is ranked if the sport has international rankings; or

(vii) Evidence that the alien or team has received a significant honor or award in the sport.

(iii) *Criteria and documentary requirements for members of an internationally recognized entertainment group*—(A) *General.* A P-1 classification shall be accorded to an entertainment group to perform as a unit based on the international reputation of the group. Individual entertainers shall not be accorded P-1 classification to perform separate and apart from a group. Except as provided in paragraph (p)(4)(iii)(C)(2) of this section, it must

be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time. Seventy-five percent of the members of the group must have had a sustained and substantial relationship with the group for at least 1 year and must provide functions integral to the group's performance.

(B) *Evidentiary criteria for members of internationally recognized entertainment groups.* A petition for P-1 classification for the members of an entertainment group shall be accompanied by:

(1) Evidence that the group has been established and performing regularly for a period of at least 1 year;

(2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and

(3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial period of time. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field or by three of the following different types of documentation:

(i) Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(ii) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(iii) Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(iv) Evidence that the group has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings; standing

in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;

(v) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(vi) Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field as evidenced by contracts or other reliable evidence.

(C) *Special provisions for certain entertainment groups—(1) Alien circus personnel.* The 1-year group membership requirement and the international recognition requirement are not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group, provided that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(2) *Certain nationally known entertainment groups.* The Director may waive the international recognition requirement in the case of an entertainment group which has been recognized nationally as being outstanding in its discipline for a sustained and substantial period of time in consideration of special circumstances. An example of a special circumstances would be when an entertainment group may find it difficult to demonstrate recognition in more than one country due to such factors as limited access to news media or consequences of geography.

(3) *Waiver of 1-year relationship in exigent circumstances.* The Director may waive the 1-year relationship requirement for an alien who, because of illness or unanticipated and exigent circumstances, replaces an essential member of a P-1 entertainment group or an alien who augments the group by

performing a critical role. The Department of State is hereby delegated the authority to waive the 1-year relationship requirement in the case of consular substitutions involving P-1 entertainment groups.

(iv) *P-1 classification as an essential support alien*—(A) *General*. An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

(B) *Evidentiary criteria for a P-1 essential support petition*. A petition for P-1 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(5) *Petition for an artist or entertainer under a reciprocal exchange program (P-2)*—(i) *General*. (A) A P-2 classification shall be accorded to artists or entertainers, individually or as a group, who will be performing under a reciprocal exchange program which is between an organization or organizations in the United States, which may include a management organization, and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(B) The exchange of artists or entertainers shall be similar in terms of caliber of artists or entertainers, terms and conditions of employment, such as length of employment, and numbers of artists or entertainers involved in the exchange. However, this requirement does not preclude an individual for group exchange.

(C) An alien who is an essential support person as defined in paragraph (p)(3) of this section may be accorded P-2 classification based on a support relationship to a P-2 artist or enter-

tainer under a reciprocal exchange program.

(ii) *Evidentiary requirements for petition involving a reciprocal exchange program*. A petition for P-2 classification shall be accompanied by:

(A) A copy of the formal reciprocal exchange agreement between the U.S. organization or organizations which sponsor the aliens and an organization or organizations in a foreign country which will receive the U.S. artist or entertainers;

(B) A statement from the sponsoring organization describing the reciprocal exchange of U.S. artists or entertainers as it relates to the specific petition for which P-2 classification is being sought;

(C) Evidence that an appropriate labor organization in the United States was involved in negotiating, or has concurred with, the reciprocal exchange of U.S. and foreign artists or entertainers; and

(D) Evidence that the aliens for whom P-2 classification is being sought and the U.S. artists or entertainers subject to the reciprocal exchange agreement are artists or entertainers with comparable skills, and that the terms and conditions of employment are similar.

(iii) *P-2 classification as an essential support alien*—(A) *General*. An essential support alien as defined in paragraph (p)(3) of this section may be granted P-2 classification based on a support relationship with a P-2 entertainer or P-2 entertainment group.

(B) *Evidentiary criteria for a P-2 essential support petition*. A petition for P-2 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(6) *Petition for an artist or entertainer under a culturally unique program*—(i) *General*. (A) A P-3 classification may be

accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

(ii) *Evidentiary criteria for a petition involving a culturally unique program.* A petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidence by reviews in newspapers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

(iii) *P-3 classification as an essential support alien*—(A) *General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-3 classification based on a support relationship with a P-3 entertainer or P-3 entertainment group.

(B) *Evidentiary criteria for a P-3 essential support petition.* A petition for P-3 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(7) *Consultation*—(i) *General.* (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from an appropriate labor organization.

(C) Except as provided in paragraph (p)(7)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from an appropriate labor organization. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. Advisory opinions must be submitted in writing and signed by an authorized official of the organization.

(D) Except as provided in paragraph (p)(7)(i) (E) and (F) of this section, written evidence of consultation shall be included in the record of every approved petition. Consultations are advisory and are not binding on the Service.

(E) In a case where the Service has determined that a petition merits expeditious handling, the Service shall contact the labor organization and request an advisory opinion if one is not submitted by the petitioner. The labor organization shall have 24 hours to respond to the Service's request. The Service shall adjudicate the petition after receipt of the response from the labor organization. The labor organization shall then furnish the Service with a written advisory opinion within 5 working days of the request. If the labor organization fails to respond within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

(ii) *Consultation requirements for P-1 athletes and entertainment groups.* Consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in the case of a P-1 petition. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. If the advisory opinion provided by the labor organization is favorable to the petitioner it should evaluate and/or describe the alien's or group's ability and achievements in the field of endeavor, comment on whether the alien or group is internationally recognized for achievements, and state whether the services the alien or group is coming to perform are appropriate for an internationally recognized athlete or entertainment group. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(iii) *Consultation requirements for P-1 circus personnel.* The advisory opinion provided by the labor organization should comment on whether the circus which will employ the alien has national recognition as well as any other aspect of the beneficiary's or beneficiaries' qualifications which the labor organization deems appropriate. If the advisory opinion is not favorable to the petitioner, it must set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(iv) *Consultation requirements for P-2 alien in a reciprocal exchange program.* In P-2 petitions where an artist or entertainer is coming to the United States under a reciprocal exchange program, consultation with the appropriate labor organization is required to verify the existence of a viable exchange program. The advisory opinion from the labor organization shall comment on the bona fides of the reciprocal exchange program and specify whether the exchange meets the requirements of paragraph (p)(5) of this section. If the advisory opinion is not favorable to the petitioner, it must

also set forth a specific statement of facts which support the conclusion reached in the opinion.

(v) *Consultation requirements for P-3 in a culturally unique program.* Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs. If the advisory opinion is favorable to the petitioner, it should evaluate the cultural uniqueness of the alien's skills, state whether the events are cultural in nature, and state whether the event or activity is appropriate for P-3 classification. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(vii) *Labor organizations agreeing to provide consultations.* The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations. The Service will also list in its Operations Instructions those occupations or fields of endeavor where it has been determined by the

Service that no appropriate labor organization exists.

(8) *Approval and validity of petition—*

(i) *Approval.* The Director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist in his or her adjudication. The Director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new P petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limit specified in paragraph (p)(8)(iii) of this section or other Service policy.

(B) If a new P petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall generally show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified in paragraph (p)(8)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (p)(8)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The approval period of a P petition shall conform to the limits prescribed as follows:

(A) *P-1 petition for athletes.* An approved petition for an individual athlete classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period up to 5 years. An approved petition for an athletic team classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the Director to complete the competition or event for which the alien team is being admitted, not to exceed 1 year.

(B) *P-1 petition for an entertainment group.* An approved petition for an en-

tertainment group classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the performance or event for which the group is being admitted, not to exceed 1 year.

(C) *P-2 and P-3 petitions for artists or entertainers.* An approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) or (iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity, or performance for which the P-2 or P-3 alien is admitted, not to exceed 1 year.

(D) *Spouse and dependents.* The spouse and unmarried minor children of a P-1, P-2, or P-3 alien beneficiary are entitled to P-4 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(E) *Essential support aliens.* Petitions for essential support personnel to P-1, P-2, and P-3 aliens shall be valid for a period of time determined by the Director to be necessary to complete the event, activity, or performance for which the P-1, P-2, or P-3 alien is admitted, not to exceed 1 year.

(9) *Denial of petition—*(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the Director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien or a change of nonimmigrant status.

(10) *Revocation of approval of petition—*(i) *General.* (A) The petitioner

shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(P) of the Act and paragraph (p) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the Director who approved the petition.

(B) The Director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner, or the employer in a petition filed by an agent, goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice—(A) Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition were not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or

(5) The approval of the petition violated paragraph (p) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(11) *Appeal of a denial or a revocation of a petition—(i) Denial.* A denied petition may be appealed under 8 CFR part 103.

(ii) *Revocation.* A petition that has been revoked on notice may be ap-

pealed under 8 CFR part 103. Automatic revocations may not be appealed.

(12) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(13) *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

(14) *Extension of stay—(i) Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The extension dates shall be the same for the petition and the beneficiary's stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the petition and the alien's stay are combined on the petition, the Director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the Director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension periods—(A) P-1 individual athlete.* An extension of stay for a P-1 individual athlete and his or her essential support personnel may be authorized for a period up to 5 years for a total period of stay not to exceed 10 years.

(B) *Other P-1, P-2, and P-3 aliens.* An extension of stay may be authorized in increments of 1 year for P-1 athletic teams, entertainment groups, aliens in reciprocal exchange programs, aliens

in culturally unique programs, and their essential support personnel to continue or complete the same event or activity for which they were admitted.

(15) *Effect of approval of a permanent labor certification or filing of a preference petition on P classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying a P petition, a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as a P nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States. This provision does not include essential support personnel.

(16) *Effect of a strike*—(i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(P) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission of the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (p)(16)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or

other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as all other P nonimmigrant aliens;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by a P nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired, will be subject to deportation.

(17) *Use of approval of notice, Form I-797.* The Service has notify the petitioner on Form I-797 whenever a visa petition or an extension of a visa petition is approved under the P classification. The beneficiary of a P petition who does not require a nonimmigrant visa may present a copy of the approved notice at a Port-of-Entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission, and whose visa expired before the date of his or her intended return, may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and present during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(18) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(P) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment



formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term "abroad" means the alien's last place of residence prior to his or her entry into the United States.

(q) *Cultural visitors*—(1)(i) *International cultural exchange visitors program*. Paragraphs (q)(2) through (q)(11) of this section provide the rules governing nonimmigrant aliens who are visiting the United States temporarily in an international cultural exchange visitors program (Q-1).

(ii) *Irish peace process cultural and training program*. Paragraph (q)(15) of this section provides the rules governing nonimmigrant aliens who are visiting the United States temporarily under the Irish peace process cultural and training program (Q-2) and their dependents (Q-3).

(iii) *Definitions*. As used in this section:

*Country of nationality* means the country of which the participant was a national at the time of the petition seeking international cultural exchange visitor status for him or her.

*Doing business* means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

*Duration of program* means the time in which a qualified employer is conducting an approved international cultural exchange program in the manner as established by the employer's petition for program approval, provided that the period of time does not exceed 15 months.

*International cultural exchange visitor* means an alien who has a residence in a foreign country which he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

*Petitioner* means the employer or its designated agent who has been em-

ployed by the qualified employer on a permanent basis in an executive or managerial capacity. The designated agent must be a United States citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence status under sections 210 or 245A of the Act.

*Qualified employer* means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the Attorney General in accordance with the provisions of section 101(a)(15)(Q)(i) of the Act.

(2) *Admission of international cultural exchange visitor*—(i) *General*. A nonimmigrant alien may be authorized to enter the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality. The period of admission is the duration of the approved international cultural exchange program or fifteen (15) months, whichever is shorter. A nonimmigrant alien admitted under this provision is classifiable as an international cultural exchange visitor in Q-1 status.

(ii) *Limitation on admission*. Any alien who has been admitted into the United States as an international cultural exchange visitor under section 101(a)(15)(Q)(i) of the Act shall not be readmitted in Q-1 status unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for pleasure or business during the immediate prior year do not break the continuity of the one-year foreign residency.

(3) *International cultural exchange program*—(i) *General*. A United States employer shall petition the Attorney General on Form I-129, Petition for a Nonimmigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The

United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified non-immigrant aliens to be admitted in Q-1 status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

(ii) *Program validity.* Each petition for an international cultural exchange program will be approved for the duration of the program, which may not exceed 15 months, plus 30 days to allow time for the participants to make travel arrangements. Subsequent to the approval of the initial petition, a new petition must be filed each time the qualified employer wishes to bring in additional cultural visitors. A qualified employer may replace or substitute a participant named on a previously approved petition for the remainder of the program in accordance with paragraph (q)(6) of this section. The replacement or substituting alien may be admitted in Q-1 status until the expiration date of the approved petition.

(iii) *Requirements for program approval.* An international cultural exchange program must meet all of the following requirements:

(A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visi-

tor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component.* The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

(iv) *Requirements for international cultural exchange visitors.* To be eligible for international cultural exchange visitor status, an alien must be a bona fide nonimmigrant who:

(A) Is at least 18 years of age at the time the petition is filed;

(B) Is qualified to perform the service or labor or receive the type of training stated in the petition;

(C) Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and

(D) Has resided and been physically present outside of the United States for the immediate prior year, if he or she was previously admitted as an international cultural exchange visitor.

(4) *Supporting documentation*—(i) *Documentation by the employer.* To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

(A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;

(B) Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with the

Immigration and Naturalization Service;

(C) Is actively doing business in the United States;

(D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and

(E) Has the financial ability to remunerate the participant(s).

(ii) *Certification by petitioner.* (A) The petitioner must give the date of birth, country of nationality, level of education, position title, and a brief job description for each international cultural exchange visitor included in the petition. The petitioner must verify and certify that the prospective participants are qualified to perform the service or labor, or receive the type of training, described in the petition.

(B) The petitioner must report the international cultural exchange visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.

(iii) Supporting documentation as prescribed in paragraphs (q)(4)(i) and (q)(4)(ii) of this section must accompany a petition filed on Form I-129 in all cases except where the employer files multiple petitions in the same calendar year. When petitioning to repeat a previously approved international cultural exchange program, a copy of the initial program approval notice may be submitted in lieu of the documentation required under paragraph (q)(4)(i) of this section. The Service will request additional documentation only when clarification is needed.

(5) *Filing of petitions for international cultural exchange visitor program—(i) General.* A United States employer seeking to bring in international cultural exchange visitors must file a petition on Form I-129, Petition for a Nonimmigrant Worker, with the applicable fee, along with appropriate documentation. The petition and accompanying documentation should be filed with either the service center having jurisdiction over the employer's headquarters or the service center having jurisdiction over the area where the international cultural exchange visitors will perform services or labor or

will receive training. A new petition on Form I-129, with the applicable fee, must be filed with the appropriate service center each time a qualified employer wants to bring in additional international cultural exchange visitors. Each person named on an approved petition will be admitted only for the duration of the approved program. Replacement or substitution may be made for any person named on an approved petition as provided in paragraph (q)(6) of this section, but only for the remainder of the approved program.

(ii) *Petition for multiple participants.* The petitioner may include more than one participant on the petition. The petitioner shall include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the United States consulate at which each participant will apply for a Q-1 visa. For participants who are visa-exempt under 8 CFR 212.1(a), the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.

(iii) *Service, labor, or training in more than one location.* A petition which requires the international cultural exchange visitor to engage in employment or training (with the same employer) in more than one location must include an itinerary with the dates and locations of the services, labor, or training.

(iv) *Services, labor, or training for more than one employer.* If the international cultural exchange visitor will perform services or labor for, or receive training from, more than one employer, each employer must file a separate petition with the service center having jurisdiction over the area where the alien will perform services or labor, or receive training. The international cultural exchange visitor may work part-time for multiple employers provided that each employer has an approved petition for the alien.

(v) *Change of employers.* If an international cultural exchange visitor is in the United States under section 101(a)(15)(Q)(i) of the Act and decides to change employers, the new employer must file a petition. However, the total

period of time the international cultural exchange visitor may stay in the United States remains limited to fifteen (15) months.

(6) *Substitution or replacements of participants in an international cultural exchange visitor program.* The petitioner may substitute for or replace a person named on a previously approved petition for the remainder of the program without filing a new Form I-129. The substituting international cultural exchange visitor must meet the qualification requirements prescribed in paragraph (q)(3)(iv) of this section. To request substitution or replacement, the petitioner shall, by letter, notify the consular office at which the alien will apply for a visa or, in the case of visa-exempt aliens, the Service office at the port of entry where the alien will apply for admission. A copy of the petition's approval notice must be included with the letter. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective international cultural exchange visitor and must certify that each is qualified to perform the service or labor or receive the type of training described in the approved petition. The petitioner must also indicate each international cultural exchange visitor's wages and certify that the international cultural exchange visitor is offered wages and working conditions comparable to those accorded to local domestic workers in accordance with paragraph (q)(11)(ii) of this section.

(7) *Approval of petition for international cultural exchange visitor program.* (i) The director shall consider all the evidence submitted and request other evidence as he or she may deem necessary.

(ii) The director shall notify the petitioner and the appropriate United States consulate(s) of the approval of a petition. For participants who are visa-exempt under 8 CFR 212.1(a), the director shall give notice of the approval to the director of the port of entry at which each such participant will apply for admission to the United States. The notice of approval shall include the name of the international cultural exchange visitors, their classification, and the petition's period of validity.

(iii) An approved petition for an alien classified under section 101(a)(15)(Q)(i) of the Act is valid for the length of the approved program or fifteen (15) months, whichever is shorter.

(iv) A petition shall not be approved for an alien who has an aggregate of fifteen (15) months in the United States under section 101(a)(15)(Q)(i) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year.

(8) *Denial of the petition—*(i) *Notice of denial.* The petitioner shall be notified of the denial of a petition, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter.

(ii) *Multiple participants.* A petition for multiple international cultural exchange visitors may be denied in whole or in part.

(9) *Revocation of approval of petition—*(i) *General.* The petitioner shall immediately notify the appropriate Service center of any changes in the employment of a participant which would affect eligibility under section 101(a)(15)(Q)(i) of the Act.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the qualifying employer goes out of business, files a written withdrawal of the petition, or terminates the approved international cultural exchange program prior to its expiration date. No further action or notice by the Service is necessary in the case of automatic revocation. In any other case, the Service shall follow the revocation procedures in paragraphs (q)(9) (iii) through (v) of this section.

(iii) *Revocation on notice.* The director shall send the petitioner a notice of intent to revoke the petition in whole or in part if he or she finds that:

(A) The international cultural exchange visitor is no longer employed by the petitioner in the capacity specified in the petition, or if the international cultural exchange visitor is no longer receiving training as specified in the petition;

(B) The statement of facts contained in the petition was not true and correct;

(C) The petitioner violated the terms and conditions of the approved petition; or

(D) The Service approved the petition in error.

(iv) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the period of time allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(v) *Appeal of a revocation of a petition.* Revocation with notice of a petition in whole or in part may be appealed to the Associate Commissioner for Examinations under part 103 of this chapter. Automatic revocation may not be appealed.

(10) *Extension of stay.* An alien's total period of stay in the United States under section 101(a)(15)(Q)(i) of the Act cannot exceed fifteen (15) months. The authorized stay of an international cultural exchange visitor may be extended within the 15-month limit if he or she is the beneficiary of a new petition filed in accordance with paragraph (q)(3) of this section. The new petition, if filed by the same employer, should include a copy of the previous petition's approval notice and a letter from the petitioner indicating any terms and conditions of the previous petition that have changed.

(11) *Employment provisions—(i) General.* An alien classified under section 101(a)(15)(Q)(i) of the Act may be employed only by the qualified employer through which the alien attained Q-1 nonimmigrant status. An alien in this class is not required to apply for an employment authorization document. Employment outside the specific program violates the terms of the alien's Q-1 nonimmigrant status within the meaning of section 237(a)(1)(C)(i) of the Act.

(ii) *Wages and working conditions.* The wages and working conditions of an international cultural exchange visitor must be comparable to those accorded to domestic workers similarly em-

ployed in the geographical area of the alien's employment. The employer must certify on the petition that such conditions are met as in accordance with paragraph (q)(4)(iii)(B) of this section.

(12)–(14) [Reserved]

(15) *Irish peace process cultural and training program visitors (Q-2) and their dependents (Q-3)—(i) General.* An Irish Peace Process Cultural and Training Program (IPPCTP) visitor is a non-immigrant alien coming to the United States temporarily to gain or upgrade work skills through training and temporary employment and to experience living in a diverse and peaceful environment.

(ii) *What are the requirements for participation?* (A) The principal alien must have been physically resident in either Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland, for at least 3 months immediately preceding application to the program and must show that he or she has no intention of abandoning this residence.

(B) The principal alien must be between the ages of 18 and 35.

(C) The principal alien must:

(1) Be unemployed for at least 3 months, or have completed or currently be enrolled in a training/employment program sponsored by the Training and Employment Agency of Northern Ireland (T&EA) or by the Training and Employment Authority of Ireland (FAS), or by other such publicly funded programs, or have been made redundant from employment (*i.e.*, lost their job), or have received a notice of redundancy (termination of employment); or

(2) Be a currently employed person whose employer has nominated him/her to participate in this program for additional training or job experience that is to benefit both the participant and his/her employer upon returning home.

(D) The principal alien must intend to come to the United States temporarily, for a period not to exceed 36 months, in order to obtain training, employment, and the experience of co-existence and conflict resolution in a diverse society.

(iii) *Are there any limitations on admissions?* (A) No more than 4,000 participants, including spouses and any minor children of principal aliens, may be admitted annually for 3 consecutive program years, beginning with FY 2000 (October 1, 1999, through September 30, 2000).

(B) For each alien admitted under section 101(a)(15)(Q)(ii) of the Act, the number of aliens admitted under section 101(a)(15)(H)(ii)(b) of the Act is reduced by one for that fiscal year or the subsequent fiscal year.

(C) This program expires on October 1, 2005.

(iv) *What are the requirements for initial admission to the United States?* (A) Principal aliens, their spouses, and minor children of principal aliens must present valid passports and either a Q-2 or Q-3 visa at the time of inspection.

(B) Initial admission for those principal and dependent aliens in this program who received their visas at either the U.S. Embassy in Dublin or the U.S. Consulate in Belfast must take place at the Service's Pre-Flight Inspection facilities at either the Shannon or Dublin airports in the Republic of Ireland.

(C) The principal alien will be required to present a Certification Letter issued by the Department of State's (DOS') Program Administrator documenting him or her as an individual selected for participation in the IPPCTP. Eligible dependents may be requested to present written documentation certifying their relationship to the principal.

(v) *May the principal alien and dependents make brief visits outside the United States?* (A) The principal alien, spouse, and any minor children of the principal alien may make brief departures, for periods not to exceed 3 consecutive months, and may be readmitted without having to obtain a new visa. However, such periods of time spent outside the United States will not be added to the end of stay, which is not to exceed a total of 3 years from the initial date of entry of the principal alien.

(B) Those participants or dependents who remain outside the United States in excess of 3 consecutive months will not be readmitted by the Service on their initial Q-2 or Q-3 visa. Instead, any such individual and eligible de-

pendents wishing to rejoin the program will be required to reapply to the program and be in receipt of a new Q-2 or Q-3 visa and a Certification Letter issued by the DOS' Program Administrator, prior to any subsequent admission to the United States.

(vi) *How long may a Q-2 or Q-3 visa holder remain in the United States under this program?* (A) The principal alien and any accompanying, or following-to-join, spouse or minor children of the principal alien are admitted for the duration of the principal alien's planned cultural and training program or 36 months, whichever is shorter.

(B) Those participants and eligible dependents admitted for specific periods less than 36 months may extend their period of stay through the Service so that their total period of stay is 36 months, provided the extension of stay is related to employment or training certified by the DOS' Program Administrator.

(vii) *How is employment authorized under this program?* (A) Following endorsement of his/her Form I-94, Arrival-Departure Record, by a Service officer, any principal alien admitted under section 101(a)(15)(Q)(ii) of the Act is permitted to work for an employer or employers listed on the Certification Letter issued by the DOS' Program Administrator.

(B) The accompanying spouse and minor children of the principal alien may not accept employment, unless the spouse has also been designated as a principal alien (Q-2) in this program and has been issued a Certification Letter by the DOS' Program Administrator.

(viii) *May the principal alien change employers?* Principal aliens wishing to change employers must request such a change through the DOS' Program Administrator to the Service. Following review and consideration of the request by the Service, the Service will inform the participant of the decision. The Service will grant such approval of employers only if the new employer has been approved by DOS in accordance with its regulations and such approval is communicated to the Service through the DOS' Program Administrator. If approved, the participant's Form I-94 will be annotated to show

the new employer. If denied, there is no appeal under this section.

(ix) *May the principal alien hold other jobs during his/her U.S. visit?* No; any principal alien classified as an Irish peace process cultural and training program visitor may only engage in employment that has been certified by the DOS' Program Administrator and approved by the DOS or the Service as endorsed on the Form I-94. An alien who engages in unauthorized employment violates the terms of the Q-2 visa and will be considered to have violated section 237(a)(1)(C)(i) of the Act.

(x) *What happens if a principal alien loses his/her job?* A principal alien, who loses his or her job, will have 30 days from his/her last date of employment to locate appropriate employment or training, to have the job offer certified by the DOS' Program Administrator in accordance with the DOS' regulations and to have it approved by the Service. If appropriate employment or training cannot be found within this 30-day-period, the principal alien and any accompany family members will be required to depart the United States.

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (2) years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

(2) *Definitions.* As used in this section:

*Bona fide nonprofit religious organization in the United States* means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates

to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

*Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

*Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

*Religious occupation* means an activity which relates to a traditional religious function. Examples of persons in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This

group does not include janitors, maintenance workers, clerks, fund raisers, or persons involved solely in the solicitation of donations.

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

(3) *Initial evidence.* An alien seeking classification as a nonimmigrant religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services. If the alien is in the United States in another valid nonimmigrant classification and desires to change nonimmigrant status to classification as a nonimmigrant religious worker, this documentation should be presented with an application for change of status (Form I-129, Petition for a Nonimmigrant Worker). The documentation shall consist of:

(i) Evidence that the organization qualifies as a non-profit organization, in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable State law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; and

(ii) A letter from an authorized official of the specific organizational unit of the religious organization which will

be employing the alien or engaging the alien's services in the United States. If the alien is to be employed, this letter should come from the organizational unit that will maintain the alien's Form I-9, Employment Eligibility Verification, that is, the organizational unit that is either paying the alien a salary or otherwise remunerating the alien in exchange for services rendered. This letter must establish:

(A) That, if the alien's religious membership was maintained, in whole or in part, outside the United States, the foreign and United States religious organizations belong to the same religious denomination;

(B) That, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination;

(C) As appropriate:

(1) That, if the alien is a minister, he or she is authorized to conduct religious worship for that denomination and to perform other duties usually performed by authorized members of the clergy of that denomination, including a detailed description of those duties;

(2) That, if the alien is a religious professional, he or she has at least a United States baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into the religious profession; or

(3) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a monk, nun, or religious brother or that the type of work to be done relates to a traditional religious function;

(D) The arrangements made, if any, for remuneration for services to be rendered by the alien, including the amount and source of any salary, a description of any other types of remuneration to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement



whether such remuneration shall be in exchange for services rendered;

(E) The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States; and

(F) If the alien is to work in a non-ministerial and nonprofessional capacity for a bona fide organization which is affiliated with a religious denomination, the existence of the affiliation; and

(iii) Any appropriate additional evidence which the examining officer may request relating to the religious organization, the alien, or the affiliated organization. Such additional documentation may include, but need not be limited to, diplomas, degrees, financial statements, or certificates of ordination. No prior petition, labor certification, or prior approval shall be required.

(4) *Initial admission.* The initial admission of a religious worker, spouse, and unmarried children under twenty-one years of age shall not exceed three (3) years. A Form I-94, Arrival-Departure Record, shall be provided to every alien who qualifies for admission as an R nonimmigrant. The Form I-94 for the religious worker shall be endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. The admission symbol for the religious worker shall be R-1; the admission symbol for the worker's spouse and children shall be R-2.

(5) *Extension of stay.* The organizational unit of the religious organization employing the nonimmigrant religious worker admitted under this section shall use Form I-129, Petition for a Nonimmigrant Worker, along with the appropriate fee, to extend the stay of the worker. The petition shall be filed at the Service Center having jurisdiction over the place of employment. An extension may be authorized for a period of up to two (2) years. The worker's total period of stay may not exceed five (5) years. The petition must be accompanied by a letter from an authorized official of the organizational unit confirming the worker's con-

tinuing eligibility for classification as an R-1 nonimmigrant.

(6) *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(7) *Limitation on stay.* An alien who has spent five (5) years in the United States under section 101(a)(15)(R) of the Act may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present outside the United States, but time spent during such visits does not count toward the requirement of this paragraph.

(8) *Spouse and children.* The religious worker's spouse and unmarried children under twenty-one years of age are entitled to the same nonimmigrant classification and length of stay as the religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. Neither the spouse nor any child may accept employment while in the United States in R-2 nonimmigrant status.

(s) *NATO nonimmigrant aliens*—(1) *General*—(i) *Background.* The North Atlantic Treaty Organization (NATO) is constituted of nations signatory to the North Atlantic Treaty. The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed in London, June

1951 (NATO Status of Forces Agreement), is the agreement between those nations that defines the terms of the status of their armed forces while serving abroad.

(A) Nonimmigrant aliens classified as NATO-1 through NATO-5 are officials, employees, or persons associated with NATO, and members of their immediate families, who may enter the United States in accordance with the NATO Status of Forces Agreement or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol). The following specific classifications shall be assigned to such NATO nonimmigrants:

(1) NATO-1—A principal permanent representative of a Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and the members of the immediate family of such persons.

(2) NATO-2—Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and the members of the immediate family of such persons; dependents of members of a force entering in accordance with the provisions of the NATO Status of Forces Agreement or in accordance with the provisions of the Paris Protocol; members of such a force, if issued visas.

(3) NATO-3—Official clerical staff accompanying a representative of a Member State to NATO (including any of its subsidiary bodies) and the members of the immediate family of such persons.

(4) NATO-4—Officials of NATO (other than those classifiable under NATO-1) and the members of their immediate family

(5) NATO-5—Experts, other than NATO officials classifiable under NATO-4, employed on missions on behalf of NATO and their dependents.

(B) Nonimmigrant aliens classified as NATO-6 are civilians, and members of their immediate families, who may enter the United States as employees

of a force entering in accordance with the NATO Status of Forces Agreement, or as members of a civilian component attached to or employed by NATO Headquarters, Supreme Allied Commander, Atlantic (SACLANT), set up pursuant to the Paris Protocol.

(C) Nonimmigrant aliens classified as NATO-7 are attendants, servants, or personal employees of nonimmigrant aliens classified as NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6, who are authorized to work only for the NATO-1 through NATO-6 nonimmigrant from whom they derive status, and members of their immediate families.

(ii) *Admission and extension of stay.* NATO-1, NATO-2, NATO-3, NATO-4, and NATO-5 aliens are normally exempt from inspection under 8 CFR 235.1(c). NATO-6 aliens may be authorized admission for duration of status. NATO-7 aliens may be admitted for not more than 3 years and may be granted extensions of temporary stay in increments of not more than 2 years. In addition, an application for extension of temporary stay for a NATO-7 alien must be accompanied by a statement signed by the employing official stating that he or she intends to continue to employ the NATO-7 applicant, describing the work the applicant will perform, and acknowledging that this is, and will be, the sole employment of the NATO-7 applicant.

(2) *Definition of a dependent of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6.* For purposes of employment in the United States, the term *dependent* of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien, as used in this section, means any of the following immediate members of the family habitually residing in the same household as the NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States:

- (i) Spouse;
- (ii) Unmarried children under the age of 21;
- (iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreements do not specify under the age of 23 as the maximum age for employment of such sons and daughters;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain, or re-establish their own households. The Service may require medical certification(s) as it deems necessary to document such mental or physical disability.

(3) *Dependent employment requirements based on formal bilateral employment agreements and informal de facto reciprocal arrangements*—(i) *Formal bilateral employment agreements*. The Department of State's Family Liaison office (FLO) shall maintain all listing of NATO Member States which have entered into formal bilateral employment agreements that include NATO personnel. A dependent of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States may accept, or continue in, unrestricted employment based on such formal bilateral agreement upon favorable recommendation by SACLANT, pursuant to paragraph (s)(5) of this section, and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (s)(5) of this section.

(ii) *Informal de facto reciprocal arrangements*. For purposes of this section, an informal de facto reciprocal arrangement exists when the Office of the Secretary of Defense, Foreign Military Rights Affairs (OSD/FMRA), certifies, with State Department concurrence, that a NATO Member State allows appropriate employment in the local economy for dependents of members of the force and members of the civilian component of the United States assigned to duty in the NATO Member State. OSD/FMRA and State's FLO

shall maintain a listing of countries with which such reciprocity exists. Dependents of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States may be authorized to accept, or continue in, employment based upon informal de facto arrangements upon favorable recommendation by SACLANT, pursuant to paragraph (s)(5) of this section, and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the application procedures set forth in paragraph (s)(5) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent requesting employment are maintaining NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 status, as appropriate;

(B) The principal alien's total length of assignment in the United States is expected to last more than 6 months;

(C) Employment of a similar nature for dependents of members of the force and members of the civilian component of the United States assigned to official duty in the NATO Member State employing the principal alien is not prohibited by the NATO Member State;

(D) The proposed employment is not in an occupation listed in the Department of Labor's Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified United States workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 dependents who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the

United States; or who cannot establish that they have paid taxes and social security on income from current or previous United States employment.

(iii) State's FLO shall inform the Service, by contacting Headquarters, Adjudications, Attention: Chief, Business and Trade Services Branch, 425 I Street, NW., Washington, DC 20536, of any additions or changes to the formal bilateral employment agreements and informal de facto reciprocal arrangements.

(4) *Applicability of a formal bilateral agreement or an informal de facto arrangement for NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 dependents.* The applicability of a formal bilateral agreement shall be based on the NATO Member State which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the NATO Member State which employs the principal alien, and the principal alien also must be a national of the NATO Member State which employs him or her in the United States. Dependents of SACLANT employees receive bilateral agreement or de facto arrangement employment privileges as appropriate based upon the nationality of the SACLANT employee (principal alien).

(5) *Application procedures.* The following procedures are required for dependent employment applications under bilateral agreements and de facto arrangements:

(i) The dependent of a NATO alien shall submit a complete application for employment authorization, including Form I-765 and Form I-566, completed in accordance with the instructions on, or attached to, those forms. The complete application shall be submitted to SACLANT for certification of the Form I-566 and forwarding to the Service.

(ii) In a case where a bilateral dependent employment agreement containing a numerical limitation on the number of dependents authorized to work is applicable, the certifying officer of SACLANT shall not forward the application for employment authorization to the Service unless, following consultation with State's Office of Protocol, the certifying officer has con-

firmed that this numerical limitation has not been reached. The countries with such limitations are indicated on the bilateral/de facto dependent employment listing issued by State's FLO.

(iii) SACLANT shall keep copies of each application and certified Form I-566 for 3 years from the date of the certification.

(iv) A dependent applying under the terms of a de facto arrangement must also attach a statement from the prospective employer which includes the dependent's name, a description of the position offered, the duties to be performed, the hours to be worked, the salary offered, and verification that the dependent possesses the qualifications for the position.

(v) A dependent applying under paragraph (s)(2) (iii) or (iv) of this section must also submit a certified statement from the post-secondary educational institution confirming that he or she is pursuing studies on a full-time basis.

(vi) A dependent applying under paragraph (s)(2)(v) of this section must also submit medical certification regarding his or her condition. The certification should identify both the dependent and the certifying physician, give the physician's phone number, identify the condition, describe the symptoms, provide a clear prognosis, and certify that the dependent is unable to maintain a home of his or her own.

(vii) The Service may require additional supporting documentation, but only after consultation with SACLANT.

(6) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this paragraph shall be granted in increments of not more than 3 years.

(7) *Income tax and Social Security liability.* Dependents who are granted employment authorization under this paragraph are responsible for payment of all Federal, state, and local income taxes, employment and related taxes and Social Security contributions on any remuneration received.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this paragraph.

(9) *Unauthorized employment.* An alien classified as a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7 who is not a NATO principal alien and who engages in employment outside the scope of, or in a manner contrary to, this paragraph may be considered in violation of status pursuant to section 237(a)(1)(C)(i) of the Act. A NATO principal alien in those classifications who engages in employment outside the scope of his or her official position may be considered in violation of status pursuant to section 237(a)(1)(C)(i) of the Act.

(t) *Alien witnesses and informants—(1) Alien witness or informant in criminal matter.* An alien may be classified as an S-5 alien witness or informant under the provisions of section 101(a)(15)(S)(i) of the Act if, in the exercise of discretion pursuant to an application on Form I-854 by an interested federal or state law enforcement authority (“LEA”), it is determined by the Commissioner that the alien:

- (i) Possesses critical reliable information concerning a criminal organization or enterprise;
- (ii) Is willing to supply, or has supplied, such information to federal or state LEA; and
- (iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

(2) *Alien witness or informant in counterterrorism matter.* An alien may be classified as an S-6 alien counterterrorism witness or informant under the provisions of section 101(a)(15)(S)(ii) of the Act if it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested federal LEA, that the alien:

- (i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation;
- (ii) Is willing to supply or has supplied such information to a federal LEA;
- (iii) Is in danger or has been placed in danger as a result of providing such information; and
- (iv) Is eligible to receive a reward under section 36(a) of the State Depart-

ment Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

(3) *Spouse, married and unmarried sons and daughters, and parents of alien witness or informant in criminal or counterterrorism matter.* An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification (S-7) when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by, with respect to paragraph (t)(1) of this section, the Commissioner, or, with respect to paragraph (t)(2) of this section, the Secretary of State and the Commissioner acting jointly, consider it to be appropriate. A nonimmigrant in such derivative S-7 classification shall be subject to the same period of admission, limitations, and restrictions as the alien witness or informant and must be identified by the requesting LEA on the application Form I-854 in order to qualify for S nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification.

(4) *Request for S nonimmigrant classification.* An application on Form I-854, requesting S nonimmigrant classification for a witness or informant, may only be filed by a federal or state LEA (which shall include a federal or state court or a United States Attorney’s Office) directly in need of the information to be provided by the alien witness or informant. The completed application is filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications that fall within the numerical limitation to the Commissioner, Immigration and Naturalization Service, for approval, pursuant to the following process.

(i) *Filing request.* For an alien to qualify for status as an S nonimmigrant, S nonimmigrant classification must be requested by an LEA. The LEA shall recommend an alien for S nonimmigrant classification by: Completing Form I-854, with all necessary endorsements and attachments, in accordance with the instructions on, or attached to, that form, and agreeing,

as a condition of status, that no promises may be, have been, or will be made by the LEA that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to that of lawful permanent resident, or otherwise attempt to remain beyond a 3-year period other than by the means authorized by section 101(a)(15)(S) of the Act. The alien, including any derivative beneficiary who is 18 years or older, shall sign a statement, that is part of or affixed to Form I-854, acknowledging awareness that he or she is restricted by the terms of S nonimmigrant classification to the specific terms of section 101(a)(15)(S) of the Act as the exclusive means by which he or she may remain permanently in the United States.

(A) *District director referral.* Any district director or Service officer who receives a request by an alien, an eligible LEA, or other entity seeking S nonimmigrant classification shall advise the requestor of the process and the requirements for applying for S nonimmigrant classification. Eligible LEAs seeking S nonimmigrant classification shall be referred to the Commissioner.

(B) *United States Attorney certification.* The United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a request for S nonimmigrant classification must certify and endorse the application on Form I-854 and agree that no promises may be, have been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

(C) *LEA certification.* LEA certifications on Form I-854 must be made at the seat-of-government level, if federal, or the highest level of the state LEA involved in the matter. With respect to the alien for whom S nonimmigrant classification is sought, the LEA shall provide evidence in the form of attachments establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, all conduct or conditions which may constitute a

ground or grounds of excludability, and all factors and considerations warranting a favorable exercise of discretionary waiver authority by the Attorney General on the alien's behalf. The attachments submitted with a request for S nonimmigrant classification may be in the form of affidavits, statements, memoranda, or similar documentation. The LEA shall review Form I-854 for accuracy and ensure the alien understands the certifications made on Form I-854.

(D) *Filing procedure.* Upon completion of Form I-854, the LEA shall forward the form and all required attachments to the Assistant Attorney General, Criminal Division, United States Department of Justice, at the address listed on the form.

(ii) *Assistant Attorney General, Criminal Division review—(A) Review of information.* Upon receipt of a complete application for S nonimmigrant classification on Form I-854, with all required attachments, the Assistant Attorney General, Criminal Division, shall ensure that all information relating to the basis of the application, the need for the witness or informant, and grounds of excludability under section 212 of the Act has been provided to the Service on Form I-854, and shall consider the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No application may be acted on by the Assistant Attorney General unless the eligible LEA making the request has proceeded in accordance with the instructions on, or attached to, Form I-854 and agreed to all provisions therein.

(B) *Advisory panel.* Where necessary according to procedures established by the Assistant Attorney General, Criminal Division, an advisory panel, composed of representatives of the Service, Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, and the Department of State, and those representatives of other LEAs, including state and federal courts designated by the Attorney General, will review the completed application and submit a recommendation to the Assistant Attorney General, Criminal Division, regarding requests for S nonimmigrant

classification. The function of this advisory panel is to prioritize cases in light of the numerical limitation in order to determine which cases will be forwarded to the Commissioner.

(C) *Assistant Attorney General certification.* The certification of the Assistant Attorney General, Criminal Division, to the Commissioner recommending approval of the application for S nonimmigrant classification shall contain the following:

(1) All information and attachments that may constitute, or relate to, a ground or grounds of excludability under section 212(a) of the Act;

(2) Each section of law under which the alien appears to be inadmissible;

(3) The reasons that waiver(s) of inadmissibility are considered to be justifiable and in the national interest;

(4) A detailed statement that the alien is eligible for S nonimmigrant classification, explaining the nature of the alien's cooperation with the government and the government's need for the alien's presence in the United States;

(5) The intended date of arrival;

(6) The length of the proposed stay in the United States;

(7) The purpose of the proposed stay; and

(8) A statement that the application falls within the statutorily specified numerical limitation.

(D) *Submission of certified requests for S nonimmigrant classification to Service.*

(1) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner only qualified applications for S-5 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph and that fall within the annual numerical limitation.

(2) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner applications for S-6 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph, certified by the Secretary of State or eligibility for S-6 classification, and that fall within the annual numerical limitation.

(5) *Decision on application.* (i) The Attorney General's authority to waive grounds of excludability pursuant to

section 212 of the Act is delegated to the Commissioner and shall be exercised with regard to S nonimmigrant classification only upon the certification of the Assistant Attorney General, Criminal Division. Such certification is nonreviewable as to the matter's significance, importance, and/or worthwhileness to law enforcement. The Commissioner shall make the final decision to approve or deny a request for S nonimmigrant classification certified by the Assistant Attorney General, Criminal Division.

(ii) *Decision to approve application.* Upon approval of the application on Form I-854, the Commissioner shall notify the Assistant Attorney General, Criminal Division, the Secretary of State, and Service officers as appropriate. Admission shall be authorized for a period not to exceed 3 years.

(iii) *Decision to deny application.* In the event the Commissioner decides to deny an application for S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

(6) *Submission of requests for S nonimmigrant visa classification to Secretary of State.* No request for S nonimmigrant visa classification may be presented to the Secretary of State unless it is approved and forwarded by the Commissioner.

(7) *Conditions of status.* An alien witness or informant is responsible for certifying and fulfilling the terms and conditions specified on Form I-854 as a condition of status. The LEA that assumes responsibility for the S nonimmigrant must:

(i) Ensure that the alien:

(A) Reports quarterly to the LEA on his or her whereabouts and activities, and as otherwise specified on Form I-854 or pursuant to the terms of his or her S nonimmigrant classification;

(B) Notifies the LEA of any change of home or work address and phone numbers or any travel plans;

(C) Abides by the law and all specified terms, limitations, or restrictions on the visa, Form I-854, or any waivers pursuant to classification; and

(D) Cooperates with the responsible LEA in accordance with the terms of his or her classification and any restrictions on Form I-854;

(ii) Provide the Assistant Attorney General, Criminal Division, with the name of the control agent on an ongoing basis and provide a quarterly report indicating the whereabouts, activities, and any other control information required on Form I-854 or by the Assistant Attorney General;

(iii) Report immediately to the Service any failure on the alien's part to:

(A) Report quarterly;

(B) Cooperate with the LEA;

(C) Comply with the terms and conditions of the specific S nonimmigrant classification; or

(D) Refrain from criminal activity that may render the alien deportable, which information shall also be forwarded to the Assistant Attorney General, Criminal Division; and

(iv) Report annually to the Assistant Attorney General, Criminal Division, on whether the alien's S nonimmigrant classification and cooperation resulted in either:

(A) A successful criminal prosecution or investigation or the failure to produce a successful resolution of the matter; or

(B) The prevention or frustration of terrorist acts or the failure to prevent such acts.

(v) Assist the alien in his or her application to the Service for employment authorization.

(8) *Annual report.* The Assistant Attorney General, Criminal Division, in consultation with the Commissioner, shall compile the statutorily mandated annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

(9) *Admission.* The responsible LEA will coordinate the admission of an alien in S nonimmigrant classification with the Commissioner as to the date, time, place, and manner of the alien's arrival.

(10) *Employment.* An alien classified under section 101(a)(15)(S) of the Act may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with fee, in accordance with the instructions on, or attached to, that form pursuant to § 274a.12(c)(21) of this chapter.

(11) *Failure to maintain status.* An alien classified under section 101(a)(15)(S) of the Act shall abide by all the terms and conditions of his or her S nonimmigrant classification imposed by the Attorney General. If the terms and conditions of S nonimmigrant classification will not be or have not been met, or have been violated, the alien is convicted of any criminal offense punishable by a term of imprisonment of 1 year or more, is otherwise rendered deportable, or it is otherwise appropriate or in the public interest to do so, the Commissioner shall proceed to deport an alien pursuant to the terms of 8 CFR 242.26. In the event the Commissioner decides to deport an alien witness or informant in S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(12) *Change of classification.* (i) An alien in S nonimmigrant classification is prohibited from changing to any other nonimmigrant classification.

(ii) An LEA may request that any alien lawfully admitted to the United States and maintaining status in accordance with the provisions of § 248.1



## § 214.2

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of this chapter, except for those aliens enumerated in 8 CFR 248.2, have his or her nonimmigrant classification changed to that of an alien classified pursuant to section 101(a)(15)(S) of the Act as set forth in 8 CFR 248.3(h).

(Title VI of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2303); secs. 103 and 214, Immigration and Nationality Act (8 U.S.C. 1103 and 1184))

[38 FR 35425, Dec. 28, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 214.2, see the List of CFR Sections Affected, which appears in the Finding Aids section in the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 65 FR 43531, July 13, 2000, in § 214.2, paragraphs (h)(2)(i)(A), (B), (D), and (E), (iii), (iv), (v), (5)(i)(A) through (D), (ii), (iv)(B), (v), (ix), (9)(ii)(C), (10)(ii), (iii), (11)(i), (ii), (iii)(A) introductory text, (B), (12)(i), (13)(i)(A), (14), (16)(ii) and (18) were revised and paragraph (h)(9)(i)(C) was added, effective Nov. 13, 2000. At 65 FR 67617, Nov. 13, 2000, the effective date was delayed until Oct. 1, 2001. For the convenience of the user, the revised and added text is set forth as follows:

### § 214.2 Special requirements for admission, extension, and maintenance of status.

\* \* \* \* \*

- (h) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) *General.* Except as provided in this section, even in emergency situations, a United States employer seeking to classify an alien as an H-1B, H-2B, or H-3 temporary employee must file a petition on Form I-129, Petition for Nonimmigrant Worker, with the service center which has jurisdiction in the area where the alien will perform services or receive training. A United States employer seeking to classify an alien as an H-2A worker must file a petition on Department of Labor (DOL) Form ETA-9079, Application for Temporary Agricultural Labor Certification and H-2A Petition, only with the DOL Regional Administrator having jurisdiction in the area where the alien will first perform services (see 20 CFR 655, Subpart B). All petitions for temporary workers, except petitions for temporary agricultural workers (H-2As), in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, must be filed with the local Service office or a designated Service office. Petitions for temporary agricultural workers (H-2A) in Guam and the Virgin Islands must be filed with the

DOL Regional Administrator having jurisdiction. The petitioner may submit a legible photocopy of a document in support of the petition in lieu of the original document. However, the original document must be submitted if requested by the Service.

(B) *Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office that has jurisdiction over petitions in the area where the petitioner is located, or in the case of H-2As, it must be filed with the DOL Regional Administrator having jurisdiction over the location where services will be performed first. The address that the petitioner specifies as its location on the petition must be where the petitioner is located for purposes of this paragraph.

\* \* \* \* \*

(D) *Change of employers.* (1) If the alien is in the United States and seeks to change employers, the prospective new employer (except in the case of H-2As) must file a petition on Form I-129, with the fee required in § 103.7(b)(1) of this chapter, requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay must conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the employment with the new petitioner until the petition is approved.

(2) [Reserved]

(3) An H-1A nonimmigrant alien may not change employers.

(E) *Amended or new petition.* The petitioner must file an amended or new petition, with fee, with the Service Center or, in the case of H-2A workers, with the DOL Regional Administrator where the original petition was filed, to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H-1A, H-1B, or H-2B petition must be accompanied by a current or new DOL determination. An H-2A petition must be filed with a valid labor certification or an application for the certification. In the case of an H-1B petition, this requirement includes a new labor condition application.

\* \* \* \* \*

(iii) *Named beneficiaries.* Nonagricultural petitions must include the names of beneficiaries and other required information at